A CONCISE

PRECEDENTS OF WILLS;

WITH AN

Introduction & Practical Notes.

BY JAMES TRAILL CHRISTIE, Esq.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

SECOND EDITION.

LONDON:

WILLIAM MAXWELL, 32, BELL YARD, LINCOLN'S INN,

Law Bookseller & Publisher.

HODGES & SMITH, DUBLIN. T. & T. CLARK, EDINBURGH.

1857.

LONDON

PRINTED BY WILLIAM TYLER, BOLT-COURT,
FLEET-STREET.

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TO THE

SECOND EDITION.

A Second Edition of this Collection of Precedents having been called for, the Author has endeavoured, without varying the original character of the work, that of a concise *Practical* Manual for the use of the draftsman, to make such additions and alterations as might render it more worthy of the favour it has hitherto received. With this view, the Precedents in the First Edition (twenty-five in number) have been carefully revised, and nearly an equal number of entirely new Precedents have been added. The new Precedents are taken some from Drafts very recently prepared, some from important Wills prepared by Conveyancers of the highest eminence, and some from Wills which have been severely tested by

a great number of transactions having taken place under the powers therein contained. In all cases, as will be at once perceived, they have been curtailed as much as it was conceived could be done without danger of impairing the clearness of the original.

The Short Introduction has, in this Edition, been expanded to seven times its original length, and it has been the anxious endeavour of the Author, in such Introduction, to state as briefly as possible the general effect of the principal recent cases which bear upon the law of Wills. As far as practicable, the result of each case is given in the words of the Judge by whom the cause was decided. The Observations on the Wills Act and the various Notes, have been revised with reference to the decisions and enactments that have occurred since the publication of the First Edition.

6, STONE BUILDINGS, LINCOLN'S INN,
April 4, 1857.

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TO THE

FIRST EDITION.

The important Changes that have taken place in the Laws relating to Wills, and to Conveyancing in general, and the feeling prevalent among the Profession in favour of a more concise method of preparing Legal Instruments than has hitherto generally obtained, have appeared to warrant the conclusion that a small collection of Precedents of Wills, compiled from approved Models, and furnished with Notes and Remarks upon points of practical application, may be found not unacceptable. A sufficient time has now elapsed since the ...ing of the Act of 7 Will. 4 & 1 Vict. c. 26, for the determination of most of the questions which necessarily arose upon the enactment of a statute

making such great and important changes in lace law as the one in question.

The Precedents in this collection have been densed as much as it was conceived could be with safety, avoiding all needless repetitions circumlocutions; and it is hoped, that, as a *Prac Manual* for the use of the Draftsman (to w alone it has any pretensions), this work will, in cases, be found available.

9, STONE BUILDINGS, LINCOLN'S INN,
November 27th, 1848.

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In page 269, line 1, *omit the word,* "henceforth."

INTRODUCTION.

THE preparation of Wills is one of the most difficult tasks imposed on the draftsman, and at the same time it is unfortunately the one which is most often required to be performed hurriedly, and with incomplete or indistinct instructions. In almost every other transaction there is some person authorised to canvass the terms proposed, to suggest alterations, or supply omissions; but, in the case of a will, the whole arrangement is made by the testator; and the persons for whose benefit the provisions in the will are intended, are generally either ignorant of its contents, or deterred by delicacy or other reasons from making any suggestions or remonstrances as to its purport. When, in addition, we remark the difficulty that non-professional persons frequently experience in carrying out or even in fully comprehending any complicated arrangement with respect to property, and the imperfect views that they frequently take of the natural consequences that may result from the provisions which they desire to insert in their wills and settlements, the serious responsibility incurred by every one who undertakes to frame any testamentary document is at once apparent.

The first duty of the person intrusted by the proposed testator with the preparation of a will is of course to obtain clear, precise, and, above all, ample instructions as to the disposal of the property to be dealt with; and this, simple as it appears, is often by no means an easy task, as it frequently happens that the testator has not fully considered both the objects of his proposed bounty and the shares and proportions in which they are to take, and also the various contingencies that may arise to defeat his purpose, when the purport of the proposed will is clearly ascertained. The instructions should be full and should comprise the whole of the testator's property. No part of it should be left to be dealt with by codicil; and it should be remembered that letters or unattested papers that may be referred to in a will cannot be proved or acted upon. Thus, a bequest of articles of plate specified in a paper in the testator's desk would be ineffectual, unless the paper were executed and attested as a will is required to be.

If the testator desire to dispose of part of his property in a manner that he would not wish to appear on the face of his will, this can only be accomplished by an absolute devise or bequest in favour of some one on whose honour the testator must rely; the will should make no reference to any secret trust or to any paper or letter referring thereto.

Inquiry should be made whether legacies proposed to be given are to be given free from legacy duty; and it will probably be thought desirable that a bequest of

articles of plate, trinkets, and such like, should be free from legacy duty.

If, as is often the case, the testator has already made a will, the general effect of which is not intended to be disturbed by the proposed new arrangement, it becomes a question for consideration, whether the changes required should be made by means of a codicil to the old will or by an entirely new will revoking the old will. Testators, not unnaturally, often expect that alterations, which to them appear slight and easy, should be made by codicil; and where it can safely be done, of course the expense and trouble of preparing an entirely new will should be avoided; but, as a general rule, it may be assumed, that, if the testator desire to make any change in his will beyond simply revoking a devise or bequest in favour of any person intended to be benefited by the will, or beyond a gift of legacies, or an appointment of guardians or executors, it will generally be found expedient to effect such change by means of an entirely new will instead of by means of a codicil. Questions as to the effect of a will and codicil continually arise, which would have been avoided by the additional care required by the preparation of a new will.

If the codicil do more than give pecuniary legacies or specific articles of property, the will ought to be carefully examined and the codicil so framed as to preclude any question arising from any incongruity between the will and the codicil; and especial care should be taken that the property disposed of by the codicil

should be so distinctly pointed out as to prevent any dispute as to whether the gift in the will or the gift in the codicil is to take effect. The case of *Molyneux* v. *Rowe* will shew the difficulties that may be occasioned by making use of a codicil instead of incurring the trouble and expense of preparing a new will. In considering that case, it should be borne in mind that the word "estate" is, in the absence of anything in the will to shew a contrary intention, held to be sufficient to pass real estate.

In the case of *Molyneux* v. *Rowe*, 25 L. J., N.S., 570, it was held by Lord Justice *Knight Bruce*, affirming the decree of the Vice Chancellor of the Duchy of Lancaster, (Lord Justice *Turner* dissenting), that a codicil, giving and bequeathing the whole of the testator's estate, and all his household goods and furniture, linen, china, watches, and all other his personal property and effects which he might be possessed of at the time of his death, free from legacy duty, and confirming the testator's will in all other particulars thereof, did not revoke a devise of real estates contained in the testator's will.

The attention of the testator, whether a will or codicil be intended to be prepared, should be especially called to the necessity of clearly and correctly specifying the persons to take under his will, and the property intended to be devised or bequeathed. This is particularly necessary in the case of a devise or bequest to relations of the testator, or to persons of the same name. In the case of a misdescription, or im-

perfect description merely, where no doubt exists as to the intention of the testator, no difficulty is likely to arise, as in the case of an error in the Christian name of a devisee or legatee, where the person intended is clearly designated by the will: see *Parsons* v. *Parsons*, 1 Ves. jun. 266; and in the case of a person described by nickname, or by any name or description other than the real name or description, evidence will be admitted to shew the sense in which the words in question were used by the testator. As in the case of *Lee* v. *Pain*, 4 Hare, 201, where, in a bequest to Mrs. and Miss. Bowden, widow and daughter of the late Rev. Mr. Bowden, of Hammersmith, evidence on behalf of Mrs. and Miss Washbourne, widow and daughter of Mr. Washbourne, who had been a Dissenting minister at Hammersmith, Mrs. Washbourne's maiden name having been Bowden, to prove that the testatrix knew both Mrs. and Miss Washbourne, and that the testatrix was in the habit of calling Mrs. Washbourne Mrs. Bowden, that she was frequently reminded of the mistake and acknowledged that she confused the names in her mind, was held by Sir *James Wigram*, V. C., to be admissible; and Mrs. and Miss Washbourne were held to be entitled to the legacies in question. In that case, it is to be remarked, that no question arose between Mrs. and Miss Washbourne and any other persons claiming under the bequest to Mrs. and Miss Bowden. It has long been settled, that, if the description in a will apply equally to two persons or things, evidence will

be admitted to prove to which of the persons or things described the will was intended to refer. And where part of a description applies to each of several persons and part applies to none of them, evidence has been received to shew the intention of the testator. But evidence will not be received to exclude a person answering to the description in the will: *Andrews* v. *Dobson*, 1 Cox, 425.

In the case of a misdescription of the devisee or legatee, of such a nature as to raise a doubt as to who is the person intended by the testator, the Court will, if possible, ascertain from the will itself who is the person pointed at by the testator, and will, in most cases, refuse to receive parol evidence to prove what was the intention of the testator. In *Doe* v. *Hiscocks*, 5 Mee. & Wel. 363, a testator had devised lands to his son John for life, and to testator's grandson John, eldest son of the said John, for life, with remainders over. John, the son of the testator, had, by his first wife, a son Simon, and by his second wife an eldest son John, and other children: it was held by the Court of Exchequer, that evidence of the instructions given by the testator for his will, and of his declarations after the will was made, had been improperly received to explain the ambiguity in the devise. Lord *Abinger*, C.B., in delivering the judgment of the Court of Common Pleas in that case said, "The testator may have habitually called certain things or persons by peculiar names, by which they were not commonly known; if these names should occur in his will, they could only be

explained and construed by the aid of evidence to shew the sense in which he used them, in like manner as if his will were written in cypher or in a foreign language. But there is another mode of obtaining the intention of the testator, which is by evidence of his declarations, of the instructions given for his will, and other circumstances of the like nature, which are not adduced for explaining the words or meaning of the will, but either to supply some deficiency or remove some obscurity, or to give some effect to expressions that are unmeaning or ambiguous. Now, there is but one case in which it appears to us that this sort of evidence of intention can properly be admitted, and that is where the meaning of the testator's words is neither ambiguous nor obscure, and where the devise is on the face of it perfect and intelligible, but from some of the circumstances admitted in proof an ambiguity arises as to which of the two or more things, or which of the two or more persons (each answering the words of the will) the testator intended to express. Thus, if a testator devise his manor of S. to A. B., and has two manors, North S. and South S., it being clear he means to devise one only, whereas both are equally denoted by the words he has used, in that case there is what Lord *Bacon* calls 'an equivocation,' *i. e.* the words equally apply to either manor, and evidence of previous intention may be received to solve this latent ambiguity, for the intention shews what he meant to do, and when you know that you immediately perceive that he has done it by the general

words he has used, which in their ordinary sense may properly bear that construction. It appears to us, that, in all other cases, parol evidence of what was the testator's intention ought to be excluded, upon this plain ground, that his will ought to be made in writing; and if his intention cannot be made to appear by the writing, explained by circumstances, there is no will."

In the case of *Douglas* v. *Fellows*, 1 Kay, 114; *S. C.*, 23 L. J., N. S., 166, a testator bequeathed a legacy to Commodore Peter Douglas, and in a subsequent part of the will bequeathed a legacy to the children of Peter Harry Douglas. The real name of Commodore Douglas was Peter John. There was no one answering to the name of Peter Harry Douglas: and Sir *W. P. Wood*, V. C., in deciding, from the words of the will, that the children of Henry Osborne Douglas were entitled to the last-mentioned legacy, refused to receive evidence to shew what were the testator's intentions as to the children of "Peter Henry," observing that he thought the only case in which such evidence would be admissible, might, perhaps, be that imaginable case hinted at in *Doe* v. *Hiscocks*, where the description used being incorrect, and equally inapplicable to the two persons, an equivocation arose; and that, if that were law in any sense, it must mean, that, when all the legitimate evidence had been admitted, and two classes of persons improperly designated seemed to be equally pointed at by the words of the will, an equivocation then arose, just as in the case where there were two

manors of Dale, either of which might have been designated by the words of the will. The unwillingness of the Court of Chancery to admit evidence apart from the will itself to explain what is meant by the will, will appear most strongly from the case next quoted, as the necessary result of the decision was the entire failure of the proposed gift. The case, moreover, as reported, being peculiarly one in which evidence of the testator's intention, if received, would have left no doubt as to who were the parties intended to be designated by his will, and in which the fact of the description proving to be erroneous arose from no carelessness on the part of the testator. A testator bequeathed a sum of money "to the children of Mary the wife of William B." the said Mary being at the date of the will forty-seven years of age. It appeared from the affidavit of William B., that he and the woman described as his wife were not married at the time of the birth of the children of Mary, but that every member of both families believed that they were married, and they were generally reputed to be so, and the fact that no ceremony of marriage had taken place was known to themselves only; that the testatrix was the aunt of Mary, and on terms of great intimacy with the family, and had often expressed an intention of making some provision for the children by her will. Sir *John Stuart*, V. C., held, that the description of children of Mary B., meant legitimate children only, and refused to receive evidence to shew that the children in question had acquired the reputation of being

children of Mary B.: *In re Overhill's Trusts*, 22 L. J., N. S., 485.

Equal care is required to point out correctly the property, whether real or personal, intended to be disposed of by will; of course, a full description of real estate is neither necessary nor desirable in a will; but the devise should contain a description of, or reference to, the real estate devised, sufficiently ample to preclude any question as to what is intended to be disposed of. Questions frequently arise as to the testator's intention in cases where property is described by a double description, when the duty is thrown on the Court of deciding whether, and how far, the larger description is reduced by the more restricted one, as in the case of *Goodtitle and Radford* v. *Southern*, 1 M. & S. 299, where a testator devised his farm, called Trogues farm, situate in the parish of D., now in the occupation of A. C., and the question arose as to part of Trogues farm, which part was not in the occupation of A. C. It was held, that the devise comprehended the whole of Trogues farm, and was not affected by the defective description of the occupation. *See* 1 *Jarman on Wills*, 2nd Edition, vol. 2, p. 664.

In the case of gifts to public or charitable institutions, this care to distinctly name the institution proposed to be benefited is particularly necessary, from the probability that two or more claimants will appear in respect of any legacy given to any institution described by any general or inaccurate description; and as, in the case of many of these institutions, there is no one hav-

ing power to compromise any claim, or to give any indemnity to any executor or trustee, who may be willing to incur risk by paying any legacy to a legatee imperfectly or inaccurately described, the risk of litigation in the case of such bequests by imperfect or inaccurate descriptions is very great. It must be remembered, that, in the case of a doubtful description or of a description applying to two or more legatees or devisees, no compromise or arrangement, that any persons answering or assuming to answer such description, may enter into among themselves, will in any manner affect the claims of the residuary devisee or legatee, or the heir-at-law or next of kin, who would be entitled on the failure of such devise or bequest; but that, if the person intended to take by the devise or bequest cannot with certainty be discovered, the gift will absolutely fail; and that two or more persons who may prove that some one among them must have been the object of the testator's bounty, in default of admissible evidence to prove who was the individual person intended by the testator, cannot by any arrangement among themselves settle the question as to the fact of any person being entitled as against the person entitled to the residuary estate of the testator.

In the case next cited, if the Master of the Rolls had come to the conclusion that the description of the institution intended to be benefited by the testator, was not such as to enable his Honour to decide as to which of the rival institutions was intended by the testator, the bequest would have failed, even if the two

institutions claiming the legacy had agreed to divide the same legacy.

In the case of *King's College Hospital* v. *Wheeldon*, 18 Beav. 30, by a will, dated September, 1852, £400 Consols were left to "The Carey-street Infirmary, Lincoln's Inn Fields, London," and the legacy was claimed by the "King's College Hospital," which was situate at the corner of Carey-street and Portugal-street, and which was described in the act of Parliament incorporating it as an "Infirmary;" and by the treasurer of an institution called "The Public Dispensary," which had been founded in 1782 in Carey-street, and which, during the time it was there carried on, had been commonly called "The Carey-Street Dispensary," &c. In 1806 it was removed to Bishop's-court, Chancery-lane, and in 1850 was removed back to Carey-street. During the time it was carried on in Bishop's-court, it was still occasionally called "The Carey-street Dispensary." "The Public Dispensary" was not an "Infirmary," and made no provision for the lodging and maintenance of infirm persons, which seems to be the proper duty of an infirmary. It appeared in evidence, that the testator had resided and carried on business for many years in the neighbourhood of Carey-street, but had retired before King's College Hospital was founded. Sir *J. Romilly*, M. R., in deciding in favour of the public dispensary, said, "I feel great doubt about this case. The ambiguity is latent, and therefore parol evidence is admissible to shew what was the intention of the testator. The plaintiffs' is a hospital, and is

situate in Carey-street; but still, I think, the testator intended to give it to the Dispensary, because he had been resident in the parish for a considerable time when the Hospital did not exist. I think that the institution which he knew, was present to his mind rather than the other."

In a gift to any class of relatives the persons or class intended to take should be so pointed out, as to preclude any question as to the testator's intention; the words "relations" and "family" have been held to mean those persons who would take under the statute for the distribution of the personal estate of intestates; though it is not probable that a testator, leaving property to his "relations," would mean to benefit only his wife and children, to the exclusion of his brothers and sisters. The word "kindred" has also received the same interpretation: *Carr* v. *Bedford*, 2 Rep. in Ch. 146. It has been held, that the word "cousins" in a will means "first cousins," to the exclusion of more remote cousins. A testator having, by his will, given real estate to trustees, upon trust in a certain event to sell and to stand possessed of the proceeds in trust "for all my cousins who shall be living at my decease:" Lord *Cranworth*, C., decided, varying the decision of Sir *John Stuart*, V. C., that first cousins only were entitled. His Lordship said, "There being no circumstances and no words in the will to guide me to the testator's meaning, and no authority upon the point, I must assume that the testator meant to declare trusts that could reasonably be carried into effect." And after noticing the case of *Carr* v. *Bedford*, as to the rule to be used in deter-

mining the meaning to be given to the word "kindred," his Lordship continued, "Exactly the same rule cannot be applied here, because 'cousin' is a more specific term than 'kindred;' and I can therefore only act by analogy, and consider what is the practical construction to be put upon the word. It must be a reasonable construction. If I hold, that, if a testator says no more than that he gives to 'cousins,' he must be taken to mean first cousins: that will be a practical conclusion and one by which the parties entitled will be easily ascertained; it coincides, too, with ordinary experience, for when a person speaks of cousins he generally means cousins, the children of an uncle or aunt. And I think that in the present case there being first cousins, that is the proper construction to adopt. The declaration will be, that by cousins are meant first cousins only; the costs of all parties ought to come out of the estate:" *Stoddart* v. *Nelson*, 6 De G., M. & G. 68. It will be remarked that the Lord Chancellor, in deciding that the word "cousins" meant first cousins, adverted to the fact of there being in the case in question first cousins. And the direction as to the payment of costs should also be noticed.

Testators should be warned, that, in the event of litigation, arising from any ambiguity or imperfect description in a will, the costs of such litigation will in very many cases be imposed by the Court not upon the unsuccessful claimant, but upon the estate of the testator by whose carelessness or inaccuracy such litigation has been caused.

The two cases next cited shew the questions that

are occasioned by gifts to classes of relatives without accurately defining what is meant by the gift to the classes in question; but it must be remembered, that, in the event of any considerable amount being given by will in the manner shewn in the two next cited cases, it is not improbable that litigation would ensue, notwithstanding the decisions in these cases; and that the costs of such litigation, supposing the judgments in these cases to be upheld, would not impossibly be directed to be paid out of the estate of the testator, or out of the fund in dispute.

In the case of *Crook* v. *Whitley*, 25 L. J., N. S., 657, a testator bequeathed "unto each of the present nieces of A. B. the sum of £——, and in case any of them shall die in my lifetime leaving a child or children who shall survive me, then and in every such case the legacy intended for her so dying shall go to her child or children in equal shares if more than one." There had been seven nieces of A. B., but at the date of the will there was only one niece living, and she was seventy-five years old and childless. It was decided by Sir *W. P. Wood*, V. C., that the word "nieces" meant nieces in the first degree, and that the children of deceased nieces did not take their parents' share by substitution.

In default of anything to the contrary appearing in the will, a gift to "nephews and nieces" will include the children of a half brother or half sister of the testator: *Grieves* v. *Rawley*, 10 Hare, 63. In his judgment in that case, Sir *G. J. Turner*, V. C.,

said, "I think that in general, when a man speaks of his brothers and sisters, he speaks of them not with reference to the definition of the word in the dictionary, but as a class standing in the same relation to one or both of his parents as he himself stands in, though not descended from the same parents. The parties are, as is said in the 'Termes de la Ley,' 'after a sort brothers,' 'brothers by the father's side,' 'brothers by one mother.' And however other parties might describe them, or they designate themselves, if required to give a precise description of the nature and degree of the relationship subsisting between them, I think that in ordinary parlance they would be called and would call themselves brothers and sisters."

The decisions in the three cases last quoted will shew the necessity for an accurate and sufficient description of the persons to be benefited by a will. It has, as we have seen, been decided that 'niece' means a daughter of a brother or sister; that 'cousin' means first cousin only, and that 'nephew' will include the son of a half brother or half sister. Without presuming to question any one of these decisions, we may remark, that, from the loose manner in which the words 'nephew,' 'niece,' and 'cousin' are habitually used by many persons, it may be doubted whether the great majority of testators, in giving directions for a gift to nephews, nieces, or cousins, would use these words in the same meaning, and only in the same meaning, as they are decided to bear by the three last-cited cases. To avoid any questions as to the testator's intention, the persons to be benefited by his will

should be described either by name and description, or by such a description of the class to be benefited as will permit of no doubt as to the real intention of the testator; and all such words as cousins, nephews, nieces, and the like, should be carefully avoided in describing a class.

In providing for younger children of the testator, or for younger children to whom the testator stands in loco parentis, it should be remembered, that the words "younger children" have been held to mean children who do not take the family estate, whether younger or not, to the exclusion of a child taking the estate, whether elder or not. Thus, the eldest daughter or the eldest son being unprovided for has frequently been held to be entitled under the description of a younger child: 2 Jarm. on Wills, vol. 2, p. 165. This rule, as to the meaning to be attached in bequests by parents or persons standing in loco parentis will not, it is conceived, apply to a devise of lands, in the absence of anything in the context of the will to shew that the testator used the words 'younger children' in any other than their ordinary sense. However well established this rule as to the meaning to be applied to the words "younger children" may be, no gift ought to be made to "younger children" in reliance on the rule in question being held to apply to that particular class; as it must always be remembered, that except in cases where a long series of decisions have established the law on any given point in such a manner as to admit of no question or discussion, a trustee or executor will in

most instances be advised for his own safety to require the judgment of a Court of competent jurisdiction, before acting in accordance with what is believed to be the correct law in the case. And in the event of such trustee or executor acting bonâ fide, the costs attending any litigation occasioned by the conduct of such trustee or executor will be ordered to be paid out of the testator's estate.

Equal care is required to point out, in such a manner as shall not admit of dispute, the subject of any devise or bequest; and perhaps more questions have arisen as to the subjects of a testator's will, than as to the objects of such will. The cases next cited will shew the class of questions that arise upon devises or bequests imperfectly describing the property proposed to be dealt with; and the various judgments will shew that the decision to be ultimately come to in most cases of doubtful or inaccurate description of the subject devised or bequeathed, is at least sufficiently doubtful to render litigation probable.

In the case of *Oakes* v. *Oakes*, 9 Hare, 666, a testator, being possessed of certain shares in the Great Western Railway Company, by his will, dated in 1849, bequeathed all his Great Western Railway Shares, and all other the Railway Shares which he should be possessed of at the time of his decease. The shares in the Great Western Railway Company were, subsequently to the date of the will, converted into stock; and the testator purchased some of such stock after the date of his will. It was held by Sir *G. J. Turner*, V. C.,

"that the Great Western stock purchased by the testator subsequently to the date of his will could not pass under the bequest of 'all his Great Western Railway Shares.' And that, if that stock passed under the will, it must have been by the effect of the gift of all other the 'railway shares' which he should be possessed of at the time of his decease—that the word in the will must be taken according to its ordinary meaning. The testator using this word had, at the date of his will, shares and stock; the latter could not pass by the force of an expression applicable only to the former. If the testator had at the date of his will railway stock only, and there were nothing properly and strictly to answer the description of railway shares, then the railway stock might have passed by the gift of railway shares." It was by the same case decided, that a sum of Great Western Railway Stock, into which the shares of which the testator was possessed at the date of his will had been converted, passed by the bequest of Great Western Railway Shares. This case shews strongly the necessity for accuracy of description, the change from shares to stock in no manner altering the rights of the shareholders so converted into stockholders, and in fact being merely a change made for greater facilities of transfer and for increased convenience in keeping the accounts of the company.

In the case of *Newton* v. *Lucas*, 1 My. & Cr. 391, it was decided by Lord *Cottenham*, C., reversing the judgment of Sir *L. Shadwell*, V. C., that a devise of all the testatrix's "freehold messuages, lands, tene-

ments, and hereditaments, situate in Denmark-court," comprised a house situate in the Strand, and forming one side of a covered passage leading to Denmark-court, in which five houses belonging to the testatrix were situate. In this case evidence was adduced to shew that the house in the Strand and the five houses in Denmark-court formed one property, and also that the house in the Strand had been described as in Denmark-court. The Lord Chancellor directed a trial at common law, and his Lordship's decision was in accordance with the verdict of the jury. In *Gauntlett* v. *Carter*, 17 Beav. 586, after bequeathing leasehold premises situate in the Strand, and devising freeholds in Villiers-street, Strand, and after a bequest to the children of A. B., of Cecil-street, Strand, the testator devised his freehold situate in Bullen-court, Strand, and Maiden-lane, in the county of Middlesex. The testator was seised of a block of freehold houses bounded by the Strand, Maiden-lane, and Bullen-court, and which were all held under the same title. Sir *J. Romilly*, M. R., held, though with some doubt, that the freehold estates of the testator situate in the Strand passed by the devise.

As to what will, or will not, pass under a bequest of "household goods," or household furniture, it may be sufficient here to mention three recent cases. In *Manning* v. *Purcell*, 23 L. J., N. S., 423 and 24 L. J., N. S., 522, a testator bequeathed "all his monies, household furniture, plate, books, wearing apparel, &c." The testator kept a tavern and betting office in Clifford's Inn

Passage, but resided elsewhere. It was held by Sir *J. L. Knight Bruce*, L. J., "that such articles of furniture in the house or tavern in Clifford's Inn Passage, where the testator's tavern or victualling business was carried on, as belonged to the business, and were used only for the purposes of the business, did not pass under these words." In coming to this decision the Lord Justice said, he proceeded not only on grounds of good sense and principle, but on the decision of Lord *Hardwicke* in *Le Farrant* v. *Spencer*. Sir *G. J. Turner*, L. J., said, "The case before Lord *Hardwicke* decisively established that the words 'my household furniture,' would only pass what the testator kept for his domestic and personal use." In *Pellew* v. *Horsford*, 25 L. J., N. S., 352, it was held by Sir *W. P. Wood*, V. C., that, under a bequest of "my household goods," a valuable astronomical clock passed, which had never been in the house of the testator, but, during the whole time it had belonged to the testator, had remained at the clockmaker's. The Vice-Chancellor said, "In the case of an hotel keeper, it would be impossible to include in the term 'household furniture' all the furniture which it was necessary to keep for carrying on his trade. That is all that is decided in *Manning* v. *Purcell*, or in the case before Lord *Hardwicke*." After quoting the words of the bequest, "household goods, plate, pictures," &c., the Vice-Chancellor continued, "I apprehend, under these words, that if his plate had been at his banker's, it would pass, though he had not used it for forty years; or pictures, if they had been sent

to an auction for sale, they would not be within the case of *Manning* v. *Purcell*."

A bequest of "household furniture, plate, linen, china, glass, books, pictures, plated articles, prints, and all and singular other my household furniture and effects, which at the time of my decease shall be in and about my said mansion-house, was held not to pass personal ornaments, but only those articles which are adapted for the use and ornament of the house: *Tempest* v. *Tempest*, 2 Kay & J. 636. In case there be any article as to which doubts may be entertained, as to whether or not such article be included in any general bequest of household furniture or the like, the article in question should, by all means, be either expressly included in or excluded from such general bequest. And as in the case of a gift to a class of relations, the precise intention of the testator should be expressed, notwithstanding decisions declaring the effect of the words used in the will in question.

It must be remembered, that every gift in a will, if possible, will be construed by itself, and without resorting to the context of the will for an explanation of the meaning of such gift. In *Mellish* v. *Mellish*, 4 Ves. 45, Lord *Alvanley*, M. R., said, "I always understood, that, when there is a mistake or omission, all the Court has to do is, to see whether it is possible to reconcile that part with the rest of the will, and whether it is perfectly clear upon the whole scope of the will that the intention cannot stand with the alleged mistake or omission.' The rule is, that, wherever there is a clear mistake or

clear omission, recourse is to be had to the general scope of the will, and the general intention is to be collected from it; but the first thing to be proved is, that there is a mistake, and whenever it comes to be a doubt the safest way is to adhere to the words." Sir *G. J. Turner*, V. C., in *Walker* v. *Tipping*, 9 Hare, 800, after quoting Lord *Alvanley's* judgment in *Mellish* v. *Mellish*, says, "I fully adopt that rule. I think the Court must be satisfied that something different from what the words naturally import is intended, before it can resort to the context in search of a different meaning for those words." In the abovementioned case of *Walker* v. *Tipping*, in the will of the testator, after gifts of several sums "per year" to various persons for life, among a long list of legacies to testator's grand-nephews and nieces, some of which legacies were directed to be paid at different ages, and some of which were directed to be sunk in the purchase of annuities, occurred gifts in these words, "J. W.—300*l.* annuity for life." "Martha—300*l.* an annuity for life." And it was held by Sir *G. J. Turner*, V. C., that both J. W. and Martha took annuities of 300*l.* for their respective lives. Upon appeal to the Lords Justices in this case, a compromise was agreed upon.

In the case of a testator intending by his will to forgive any debt due to him, or to dispose of any sum of money due to him, the amount of the debt so to be forgiven or disposed of, or the date of the loan, or some other circumstances, should be stated, so as to

preclude all question as to the identity of the debt so proposed to be dealt with, and to prevent the same from being mixed up with any other transactions between the testator and his debtor. A testator had advanced to his nephew J. A. 2000*l.*, and had lent him 1600*l.* By his will the testator "forgave to his said nephew J. A. the debt of 2000*l.* which he had advanced to him on loan." Upon a suit to determine the meaning of the testator's will, it was found by the certificate of the Chief Clerk of the Master of the Rolls, that the 2000*l.* advanced by the testator was a gift and not a loan; and it was held by Lord *Cranworth*, C., affirming a decision of Sir *John Romilly*, M. R., that the testator by his will meant the 2000*l.* so given to his nephew: *Smith* v. *Armstrong*, 6 De G. M. & G. 150.

Questions not unfrequently have arisen as to the meaning to be given to the word "money" or "monies" when used in a will. There is little doubt that, in most cases, when a testator bequeaths his "money," he intends to include in the bequest his stock in the public funds, and in very many cases to dispose of his whole personal property; but in the absence of anything in the will to extend the meaning of the word "money," stocks, shares in public companies, and other personal property other than money, will not pass by such bequest. Money at a banker's will pass under the word "money;" as will also, it is believed, Exchequer-bills and other documents payable to bearer. Money at a bank on a deposit account will pass by a bequest of "money:" *Manning* v. *Purcell*,

23 L. J., N. S., 423. In the same case it was decided by the Lords Justices on appeal, that money deposited in the hands of a stakeholder to await the result of a wager, did not pass under the word "money," 24 L. J., N. S., 522. The words "ready money" will also be effectual to pass money at a banker's, though it may be doubted whether money on a deposit account at a bank would pass by those words. Under the words "ready money" money in the hands of an agent would, most probably, not pass. But, in the case of *Cooke* v. *Wayster*, 23 L. J., N. S., 496, it was held by Sir *John Stuart*, V. C., that under a bequest of "all my ready money and securities for money, money in the funds, and money in the bank or banks (if any), which may be due or owing to me at the time of my decease," a sum of money passed which had been placed by the testator in the hands of an agent for the purposes of investment. The present state of the law on the subject of the meaning to be given to the word "money" in a will, will best appear from the judgment in the case of *Lowe* v. *Thomas*, 1 Kay, 369, and affirmed on appeal by the Lords Justices, 5 De G. M. & G. 315. In that case the testator bequeathed "to my brother J. T. the whole of my money for his life, at his death to be divided between my two nieces R. and M. T., my clothes to be divided between them, my watch and trinkets for my niece M. T. I likewise declare that the longest survivor of the above-mentioned nieces is to become possessor of the whole money." The only property of which the testator died

possessed was a sum of £860, 3*l.* 5*s.* per cent. Bank Annuities, and a moiety of £1937 : 17 : 8 Old South Sea Annuities, and other personal property under £90 in all; and it was decided by Sir *William Page Wood*, V. C., that the stock did not pass by the will. The Vice-Chancellor, after expressing his regret in coming to the conclusion that he thought he was bound to come to on the authorities, proceeded, "I entirely agree with the remark of Lord *Lyndhurst* in *Parker* v. *Marchant*, 1 Ph. 360, that in construing wills as to personal estate the Court ought to construe the words in the ordinary acceptation of mankind. The question is, what is the ordinary acceptation of the word 'money' in a will. Believing that this Court acts upon the rule laid down by Lord *Lyndhurst*, I have to see what my predecessors have considered to be the ordinary sense which mankind attach to the word 'money' in a will. Lord *Eldon* considers that it does not mean stock in the funds; and other judges have come to the same conclusion on the very ground laid down by Lord *Lyndhurst*. If a person bequeaths 'his money' simply, and not 'the residue of his money after payment of debts,' it has been entirely settled by the decisions in *Hotham* v. *Sutton*, 15 Ves. 319, and *Gosden* v. *Dotterill*, 1 M. & K. 56, that, by the word 'money' in such bequests, the testator has not bequeathed his stock in the public funds. It is argued, that we talk of 'money in a purse,' 'money at a bank,' and in the same way of 'money in the funds;' and that the word 'money' should include one as well

as another kind of money in each case. But what we call 'money in the funds' is not strictly speaking money, but rather a right to receive a certain annuity; and Lord *Eldon* has held, and Sir *John Leach* has followed him, that the word 'money' in a gift by will must be limited to its precise meaning, unless there be something in the context to enlarge its signification." "All that remains to consider is, whether the context of this will in any way assists me in giving a wider meaning to the word 'money.' I have not here either of the two circumstances which have been relied on for that purpose in other cases. One of these is, that, after directing payment of the testator's debts and legacies, the residue of his money has been given. Then, as the debts and legacies are to be paid out of the whole of his property, it has been considered, that the description of his property by the words 'residue of my money,' must mean residue of property ejusdem generis with that which was subject to the payment of debts, and therefore passed stock in the funds. Another class of cases has been, where the Court has leant against an intestacy, and, in order to effect the intention of the testator, unless something else appeared in the will to control that construction, the Court has called that intention in aid, to shew that, in disposing of his property, by the word 'money' he meant to include stock. But, in this case, there is no charge of debts or legacies, nor is there any gift which could prevent this lady from dying intestate as to some portion of the property

which she would almost certainly have at the time of her death, such as furniture and similar articles, which could not by any intendment be included in the word 'money.' The only point remaining is this, that the testatrix has limited the gift to a bequest for life, with a gift over; and that strongly confirms the impression which I should have, if not bound by authority, that the testatrix intended in this bequest to include her stock; but, as the word 'money' is allowed to pass not only money in a purse but money at a bank, I think it would be giving too large an effect to this kind of limitation, to say, that it was impossible, under any circumstances, that the testatrix could mean that what she thus settled for life, with limitations over, might not be at her death of sufficient amount to make it worth settling in that manner." On appeal, Lord Justice *Knight Bruce* confirmed the judgment of the Vice-Chancellor, "there being a total absence of context to shew that the testatrix employed the word 'money' otherwise than in its correct and proper sense, which is not property generally, but a particular species of property. That species no more includes annuities than houses or furniture. An annuity is not, though its fruit is, money; nor where a man gives his wool or his apples are we to presume that he means to give his sheep or his orchard." Lord Justice *Turner*: "The first question is, could it be the intention of the testatrix, by these words, to pass the whole of her property? Are they tantamount to a description of the whole of her estate? It appears to me to be clear,

upon the context of the will, that this could not be the intention; because we find in the will, after the disposition of the whole of the testatrix's money, a disposition of some specific articles, namely, her clothes, watch, and other things, and this not by way of exception out of the disposition of the whole of her money previously made. It is clear, therefore, that the whole of the residuary estate cannot have been intended to pass under the description of money. Then, can it be said, that, under that description, she intended to pass all property producing income? To determine this, we must look at the different sources from which income may be derived. Suppose she had invested her property in a ship instead of the funds; could it be said that the ship, which is only one of the numerous forms of investment producing income, would pass? I think it clearly would not. If we deviate from the correct meaning of the words which the testatrix has used, we are immediately involved in the difficulty of deciding how far the deviation is to carried. I think that in this, and in other like cases, it is necessary to adhere to the proper and correct sense of the words used in the will, where there is no context to give a different effect to them. Then, is there anything in the residuary disposition contained in the will, which can have the effect of passing more than what is strictly money? It is argued, that money must mean money in a state of investment, for a life estate is given; but then it would be by the act of the Court, in order to give effect to the bequest in remainder, that the investment

would be made, where the same property is given in succession to different persons."

In the absence of a contrary intention appearing by the will, a general devise of real estates will include freeholds, copyholds, and leaseholds. In the case of *D'Almaine* v. *Moseley*, 1 Drew. 629, a gift and bequest of the rest and residue of the testator's estate and effects to trustees, who were also appointed executors, in trust, to collect, get in, and receive the same, was held to be sufficient to pass real estate. Sir *R. T. Kindersley*, V. C., in deciding that the real estate of the testator passed by the will, observed, "It is entirely a question of intention. The general principles applicable to cases of this sort are well established. One rule is, that the word 'estate' simply, is sufficient to pass real estate; but, in most cases, the word 'estate' is not used simply; and another rule is, that, supposing there is nothing in other parts of the will to control the meaning of the gift, the effect of the word 'estate,' coupled with other words, is this: if the other words would, without the word 'estate,' not be sufficient to pass the whole personal estate, the word 'estate' will be considered as used to effect a complete passing of the personal estate; but, if the other words are sufficient to pass all the personal estate, then the word 'estate' must be read as intended to apply to real estate."

The case of *Molyneux* v. *Rowe*, before quoted, will afford an example of the class of cases in which the import of the word "estate" is held by the context to mean personal estate only.

In the case of *Coard* v. *Holderness*, 24 L. J., N. S., 388, the testator "gave, bequeathed, and disposed of all estate, effects, and property, whatsoever and wheresoever, of which he then was or should at the time of his decease be possessed of or entitled to at law or in equity, or over which he had any right or power of disposition," unto trustees, their executors and administrators, upon trusts, the language of the will referring only to personal property. Sir *John Romilly*, M. R., held that the testator's real estate did not pass under that residuary devise, observing, that there was not upon the face of the will a single expression which referred specially and exclusively to real estate; that the words "heirs," "devise," "rent," were nowhere to be found in the will, quoting Lord *Eldon's* remark in *Church* v. *Mundy*, 15 Ves. 396, that "the best rule of construction is that which takes the words to comprehend a subject which falls within their usual sense, unless there is something like a declaration plain to the contrary;" and remarking, that the general scope and object of the will and all the limitations pointed to personal estate only.

The several cases before quoted as to the meaning to be attached to the word "estate" in a will, and particularly the observations of the Vice-Chancellor *Kindersley* in *D'Almaine* v. *Moseley*, sufficiently shew the necessity of distinctly devising real estates; and, if there be no devise of real estates, of describing the personalty in such a manner in the bequest of personalty as to preclude any question as to the supposed intention

of the testator, there being comparatively but few wills, of which, as in the case of *Coard* v. *Holderness*, it would be safe to assume that the absence of words relating to or intention to dispose of real property is sufficient to shew that the word estate, or any other word in itself sufficient to pass real property, was used only with reference to personalty.

In the case of *Grainger* v. *Slingsby*, 25 L. J., N. S., 573, it was decided by the Lords Justices, affirming the decree of Sir *John Stuart*, V. C., that a bequest of "the whole of my fortune now standing in the funds" did not comprise Bank Stock, the testatrix at the date of her will and at her death being possessed of Consols, 3¼ per cent. Reduced Bank Annuities, and Bank Stock. From the importance that seemed to be attached in this case to the fact of the testatrix being possessed of property in the funds, it may be considered doubtful whether Bank Stock would not have been held to pass by the bequest, if there had been no property properly answering the description in the will. In the case of money in the funds being mentioned among a number of various kinds of personal estate given by the will, it is conceived that no question could arise, even if the testator were possessed of no stock in the funds, but that Bank Stock would not be held to be meant by such bequest of money in the funds. In bequeathing a specific sum of any stock or funds, care should be taken that no doubt arise as to whether the gift was of so much stock or of so much money; and it should be remembered, that evidence of what the testator's

intentions were, will most probably not be admitted. A testatrix was possessed of four debentures of the Spanish government for the sum of 1000*l.* each, redeemable at the rate of 55*l.* per cent. on the nominal capital. By her will the testatrix bequeathed "the sum of 2000*l.* Spanish bonds or coupons now belonging to me." Evidence was tendered but not admitted, to prove that the testatrix had spoken of and always treated the debentures in question as certificates for 500*l.* each, and of the four as being securities for 2000*l.* It was decided by the Lords Justices, affirming the decision of Sir *John Stuart*, V. C., that two of the debentures only passed by the bequest. Sir *G. J. Turner*, L. J., said in his judgment, "Where there is a specific bequest, evidence must of course be admitted to shew what property there is answering to the description contained in the bequest; but if, upon that evidence being admitted, it appears that there was property correctly answering to the specified description, no evidence can, as I conceive, be admitted to shew that the bequest was intended to apply to other property." "It was urged, that several meanings might be put upon these words (2000*l.* Spanish debentures), that they might be construed to mean the sum of 2000*l.* sterling out of the Spanish debentures, or Spanish debentures of the value of 2000*l.*; or that they might refer to the original debts in respect of which these debentures were given, and be construed to mean the sum of 2000*l.* in respect of which the four debentures were given, each debenture being in respect of a sum of 500*l.* of

debt. These several meanings were said, on the part of the appellant, to create an ambiguity which might be explained by evidence beyond that which merely discloses the state of the property; and the evidence, it was said, was conclusive to shew that the meaning last suggested was the true one. Before, however, the evidence can be admitted, we must be satisfied that the ambiguity exists; and, looking to the state of the property to which this bequest is to be applied, I am satisfied that there is no such ambiguity as would justify the admission of the evidence—the whole description, 'the sum of 2000*l.* Spanish debentures' must be taken together, and if it be so, the Spanish debentures give a character to the gift; just as in a gift of £2000 3*l.* per cent. Consols, the mention of the stock designates the gift." This case has been quoted at length as shewing, among other things, the rules upon which the Court will act as to the reception or non-reception of evidence to explain the meaning of a bequest in a will. From the case as reported, and from the remarks of the judges who decided it, it appears most probable that the intention of the testatrix was to dispose of the entirety of her Spanish debentures, the two debentures which were held to be all that passed by the bequest in no manner representing two sums of 1000*l.* each, except in having the sum of 1000*l.* printed on such debentures, though the same were redeemable at smaller sums.

A general devise of real estate will, of course, comprise copyholds as well as freeholds, unless a contrary

intention appear by the will. When it is intended to devise real estate consisting of freeholds and copyholds in a course of settlement, it is generally desirable to separate the devises of freeholds and copyholds, and after devising the freeholds to the uses desired, to devise the copyholds to trustees upon trusts corresponding with the uses declared of the freeholds. From the different extent to which freehold and copyhold estates may be settled, and the different extent of the powers which may be given over freehold and copyhold estates, great trouble and confusion may, in many instances, arise from confounding freehold and copyhold estates in one general devise, and the intentions of the testator may not unfrequently entirely fail. Inquiry should always be made as to whether the testator either has or is likely to become seised of any copyhold estates; and it will, in many cases, be advisable to insert a devise of copyhold estates, although the testator neither has nor contemplates the acquisition of copyholds, to prevent the difficulties that may arise from the death of the testator seised of copyholds which would pass under the general devise in his will. Though, as we have seen, a general devise of real estate will include copyholds, yet in the absence of evidence of a contrary intention (which intention, as has been shewn, will, in most cases, be sought only from the context of the will,) a devise of freeholds will be held not to include copyholds. If, however, it appear from the will that the word "freehold" was used not in its sense of freehold as opposed to copyhold,

but as a description of real estate as opposed to personal, copyhold estates may be held to pass under a devise of freeholds. Though, of course, in preparing a devise of freeholds and copyholds, the real estate in question should be so described or referred to as to shew the intention of the testator to comprise both freeholds and copyholds in such devise; yet the fact that a devise of "freeholds" has been from the context of the will construed to include copyholds should be borne in mind, as otherwise the intentions of the testator may be frustrated by the word "freeholds" being used by him as opposed to copyholds, and construed by the Court to mean both freeholds and copyholds as opposed to personalty.

The will of a testator contained these words, after directing payment of his debts, &c.: "That being done, all the rest, residue, and remainder of my property, whether freehold or personal estate, and wheresoever situate, I give and devise to my beloved wife, M. R., her heirs and assigns." Sir *John Romilly*, M. R., held, that copyholds passed under the will: *Reeves* v. *Baker*, 18 Beav. 372.

In the case of the testator intending to give an immediate interest in one property, and a future interest in another property, the two properties should be so distinguished in the devise as to allow no doubts as to the real intention of the will, or as to the intention of the testator to give any interest by implication to any person.

In the case of *The King* v. *The Inhabitants of Ring-*

stead, 9 B. & C. 218, the testator gave to his daughter Elizabeth a certain part of a messuage for her life, if she should so long continue a widow and unmarried. And from and after her decease or day of marriage, which should first happen, he gave and devised the said part of a messuage and certain other real estate to his four grandchildren therein named, as tenants in common in fee; and it was held, upon the principle that the heir-at-law is not to be disinherited except by express words or necessary implication, the devise to the grandchildren passed an estate to them, which was to take effect only on her death, and that the heir-at-law of the testator must have the estates during her life.

In *Attwater* v. *Attwater*, 18 Beav. 330, and 23 L. J., N. S., 692, the testator devised to E. N. and E. C. N. his freehold house and premises for their use during the natural life of each, and at the decease of both he bequeathed the same to J. N. A., together with his copyhold and leasehold property situate at C. Sir *John Romilly*, M. R., held, that, although there was considerable conflict between the authorities on this subject, the case was governed by the case of *The King* v. *The Inhabitants of Ringstead*, and that J. N. A. took no estate in the copyholds and leaseholds at C. until after the decease of E. N. and E. C. N.; and that, until that event, the customary heir took the copyholds, and the next of kin the leaseholds, the same being undisposed of by the will. The questions of which instances are afforded by the two cases last cited, are among that numerous class of questions

which are escaped by care and deliberation in the preparation of legal instruments, and by no other means.

One of the points to which the testator's attention often requires to be drawn in elaborate limitations, is the meaning to be attached to the word "survivor" or "surviving." Especial care should be taken when the testator in his instructions uses this word, that the sense in which it is to be used be clearly understood and expressed in the will, and that the word be so used that no doubt can arise as to whether the survivorship in question refer to the time of the testator's death or to any other period, or as to any intention on the part of the testator to create any estate by implication. In the case of a gift, to take effect in possession immediately on the decease of the testator, no question arises; and the survivorship, in the absence of anything clearly shewing a contrary intention, is naturally referred to the time of the testator's death. And for a long period it appeared to be a settled rule, that, in the case of a bequest of personalty for life, with remainder to certain persons as tenants in common and the survivors of them, the word survivors was held to mean surviving the testator. It has, however, been for some time settled, that, in the last-mentioned case, the survivorship refers to the death of the tenant for life. In *Cripps* v. *Woolcott*, 4 Mad. 11, which may be considered the leading case upon this subject, Sir *John Leach*, V. C., considered it to be settled, that "if a legacy be given to two or more, equally to be divided between them, or to the sur-

vivors or survivor of them, and there be no special intent to be found in the will that the survivorship is to be referred to the period of division: if there be no previous interest given in the legacy, then the period of division is the death of the testator, and the survivors at his death will take the whole legacy. But if a previous life estate be given, then the period of division is the death of the tenant for life, and the survivors at such death will take the whole legacy.' The doctrine so laid down by Sir *John Leach* has been since followed in many similar cases. It must however be remembered, that the word 'survivor' or 'surviving,' may bear two different meanings in the same will. In the case of *Neathway* v. *Reed*, 3 De Gex, Mac. & Gor. 18, decided by the full Court of Appeal, the words of the will were, "I give and bequeath to my sister C. N.'s surviving children 30*l.* each. I also give and bequeath to my sister C. N. the interest of my funded property during her natural life, and after her decease such property to be equally divided between her surviving children." It was held, affirming the decision of Sir *John Stuart*, V. C., that though, on the construction of the word "surviving" in the first clause of the will, the period of vesting and distribution referred to the death of the testator, yet that the period of vesting in the last clause referred to the death of C. N., and that only the children who survived C. N. were entitled.

The present state of the law as to the meaning to be attached to the word "surviving" in different cases

will best appear from the judgment in this case. Lord *Cranworth*, C.—"The question in each case as to who is meant by the word 'survivor' is often one of difficulty. The testator very frequently does not himself know in what sense he uses the term; in such case the established rules of construction must be referred to in order to determine. According to the old principles of law, the rule was, that the period of vesting should be at the moment of the testator's death. Now, however, in putting a construction on the word 'surviving,' reference is had to the intention of the testator, as discoverable from the whole will. In my opinion, when an estate is given to a person for life, and after his death to his surviving children, those only of the children who survive the tenant for life will take. It has been said, that although such may be the general rule of construction, yet that there is something in this case to take it out of that rule, because there were legacies of 30*l.* each to the surviving children of the testator's children, clearly independent of the rule to which I have referred. And it is said, that, because the period of the testatrix's death and of the distribution is in that clause coincident, therefore that the last sentence of the will must be so construed. It is well established, however, that the same words occurring in different parts of a will, are not necessarily to have the same meaning attributed to them, but they must be construed, in such instance, by reference to the context."

Sir *J. L. Knight Bruce*, L. J., after stating the clause

in the will bequeathing the funded property, proceeds, "Unless there is something in the context to control the meaning of these words, the children referred to must be taken to be those who were living at the death of C. N. It is however said, that there is something in this will which shews that a different meaning must be given to the word 'surviving,' inasmuch as, immediately before the bequest in question, there is one thus expressed, 'to my sister C. N.'s surviving children, 30*l.* each.' And it is said, that, as in this bequest the word 'surviving' must refer to the testatrix's death, it must also refer to the same period in the other. The argument is plausible and raises some doubt, but is not, in my opinion, of sufficient weight to justify a departure from the ordinary rule of interpretation."

Sir *G. J. Turner*, L. J.—"The argument on behalf of the appellant is, that the term 'surviving children,' having a particular meaning in the first gift, must receive the same meaning in the second gift. But the reason why the phrase in the first clause must be held to designate children surviving at the death of the testatrix, is that there is no other period to which the term 'surviving' could in that instance refer. The same observation does not apply to the second clause. As regards that clause, there are two periods, to either of which the term 'surviving' might apply—either the death of the testatrix, or that of the tenant for life—and the question is, to which of those periods it must be taken to refer. Now it is an established rule, that, if possible, some effect must be given to every word of

the will. If the gift had been to C. N. for life, and after her decease to 'her children,' without the word surviving, the children living at the testatrix's death would have taken. I think that some effect must be given to the word 'surviving,' and that it must mean surviving C. N."

The cases bearing upon the meaning to be attached to the word 'survivor,' or 'surviving,' and the present state of the law on this subject, are set out in Jarman on Wills, 2nd edition; but the leading principles on the subject may be collected from the two cases last quoted. Though the doctrine laid down in *Cripps* v. *Woolcot* has, as has been seen, been acquiesced in, and may now be considered as settled law, yet that case, and the many cases in which the decision of Sir *John Leach* has been followed, have only established the law on this subject so far as relates to personal property; and the question whether the rule laid down in *Cripps* v. *Woolcot*, followed as that rule has been by all equity judges since, extends to real estate, may still be considered doubtful. In the recent case of *Haddesley* v. *Adams*, 25 L. J., N. S., 828, Sir *John Romilly*, M. R., declined to express an opinion as to whether the rule laid down in *Cripps* v. *Woolcot* applied to real estate or not. In *Haddesley* v. *Adams*, a testator devised real estate to trustees and their heirs, upon trust for G. H. A. and M. his wife, during their lives, and after the decease of the said G. H. A. and M. his wife, the testator devised the said estates unto and amongst A., B., C., and D., to hold to them as tenants in common, and

not as joint tenants, during the term of their respective natural lives, with benefit of survivorship, with remainder to the said trustees and their heirs to support contingent remainders, with remainder to the issue male of the said A., B., C., and D. successively, lawfully to be begotten, with remainder to the testator's right heirs. It was held, that A., B., C., and D. took estates for life as tenants in common, with several remainders to the issue in tail.

In attempting to dispose, by will, of jewels or trinkets which have been worn by the wife of the testator, it is necessary to consider whether they remain the property of the husband, or whether they have become part of the wife's paraphernalia, or whether they have become the separate property of the wife. "The wife's paraphernalia consists of her apparel, and ornaments suitable to her rank and degree; and gifts made by the husband to his wife of jewels or trinkets, to be worn by her as ornaments, are considered as part of her paraphernalia." These articles, equally with the wife's other personal chattels, may be disposed of by the husband in his lifetime, and, with the exception of the wife's necessary clothing, are also subject to his debts. The wife also, herself, has no power to dispose of them by will or gift during her husband's lifetime. But paraphernalia differ from the wife's other personal chattels in this respect, that the husband, though he may dispose of them in his lifetime, has no power to bequeath them away from his wife by his will. Gifts of jewels or trinkets, made to the wife by a relative

or friend, either upon or after her marriage, will generally be considered, in equity, as intended for her separate use, in which case they will not be reckoned among her paraphernalia, but will be exempt from the control and debts of her husband, and may be disposed of by the wife in the same manner as if she were unmarried: Williams on Personal Property, 2nd Edit., p. 293.—If the testator attempt, by his will, to bequeath away from his wife, either her paraphernalia or the jewels, considered in equity as intended for her separate use, and also give any benefit to the wife by the same will, the wife will be put to her election which she will take; that is, she will be compelled to relinquish either the paraphernalia or jewels so bequeathed, or the bequest or other benefit intended for her under the will. It has been decided, that old family jewels, belonging to the husband, although worn by the wife, do not thereby become part of her paraphernalia: *Calmady* v. *Calmady*, 11 Vin. Abr. 181, pl. 21.—In the case of *Jervoix* v. *Jervoix*, 17 Beav. 566, the testator bequeathed to his wife, among other things, "the use, during her life, of all his jewels," and bequeathed his plate and jewels, subject to the rights and powers thereby given to his said wife, to trustees, as heir-looms. The aunt of the testator, shortly after his marriage, made the wife a present of a set of pearl ornaments, which were afterwards reset, and the cost of resetting paid for by the wife out of her separate estate. The husband, shortly after the marriage, purchased two brilliant bracelets, which the wife

was afterwards in the habit of wearing. The husband was also possessed of certain family jewels, which the wife also wore at court, and on other full dress occasions. It was decided, that the family jewels were not the paraphernalia of the wife, but that the pearl ornaments clearly were so ; and that the bracelets must be treated as the paraphernalia of the wife, as they had been acquired during the coverture, and the husband evidently bought them for the purpose of adorning his wife, and she constantly made use of them, and it did not appear that they had been bought to form a portion of, or to be connected with, the old family jewels ; and that the wife was entitled to the use of the family jewels during her life, under the trusts of the will ; and that no case of election arose. In the case of *In re Hewson—D'Allmaine* v. *Moseley*, 23 L. J., N. S., 256, the testator gave the use of his furniture, plate, linen, jewels, and household effects, including the jewels and effects which belonged to his wife before her marriage, and which he had assumed by marital right, unto his wife for life : it appeared that the jewels and other articles belonging to the wife before marriage had been deposited with the husband's bankers in the wife's name, and had been always spoken of as the wife's property. Upon the wife's death, it was held by the Lords Justices, that, as to the paraphernalia, the next of kin of the wife were entitled to elect to take the benefits under the will or the paraphernalia.

The fact of jewels or other trinkets being deposited with a banker or other person for safe custody, will

not, it is conceived, in default of any special evidence, be held to exclude such jewels or trinkets from any bequest referring to them as in the possession of or as worn by the wife.

In a gift in favour of a married woman, it is generally thought most expedient to settle the property so given to her separate use, so that it may be secure against the creditors of the husband, and so that the wife may possess the absolute control over the property as if she were single. In many cases, she is also prevented from anticipating the income, or in any way disposing thereof before it becomes due. It may be a question, whether the custom of so settling property to the separate use of married women is not sometimes carried too far; but there can be none as to the expediency of the practice in many cases, and as to its propriety in all cases where the husband is either embarrassed or likely to become so, or where there is any prospect of a separation between the husband and wife. In every case where the husband is engaged in trade, however prosperous he may be or appear to be, or whatever the confidence which the testator may repose in him, all property given to the wife should be settled to her separate use without power of anticipation. If the restriction or anticipation be omitted, it will too often be found that the provision intended by the testator for the wife and her children has been sacrificed in a vain attempt to maintain the husband's credit; and even if the wife should refuse to apply her property for such a purpose, it is far better that she should

be spared the dissensions and upbraidings that a refusal on her part is likely to call forth.

If the testator think proper, a power to the trustees to advance all or any part of the trust property to the husband upon his personal security, or upon any other terms, may be inserted.

The most usual method of limiting property given for the benefit of a married woman, is to settle the same for the separate use of the married woman for her life, and after her death upon trust for her children, as she shall appoint, and in default upon trust for such children equally, with powers of advancement, maintenance, and education; and in default of any child becoming entitled, in trust, if the wife survive her husband, for her absolutely; and if she die in his lifetime, upon such trusts as she shall by will appoint; and in default of such appointment, in trust for such persons as would have become entitled under the statutes of distribution if she had died intestate and without having been married, the effect of which, of course, is to exclude the husband. It is also usual to give the married woman a power, notwithstanding there be children, to appoint a life interest or any less interest to the husband. If the testator desire that the property given to or for the benefit of the wife, or any part thereof, may, under any circumstances, be advanced to the husband, additional care will be required in the selection of the trustees to whose discretion the propriety of making any such advance is proposed to be entrusted.

In providing for a married woman by will, it will frequently be very desirable to ascertain whether any covenant exists for the settlement of her after-acquired property, of such a nature as to compel her to settle property given by will for her separate use. It appears to be settled, that a covenant by the husband that he would settle any property to which his wife, or he in her right, became entitled during the coverture, does not extend to property left to the wife's separate use: *Thornton* v. *Bright*, 2 Myl. & Cr. 254, and *Douglas* v. *Congrave*, 1 Keen, 423. But in *Butcher* v. *Butcher*, 14 Beav. 222, the words of the settlement were, "And it is agreed and declared by and between the parties hereto, and the said J. B. H. (the intended husband), for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said J. M. and M. H. (the trustees), their executors, administrators, and assigns, that, in case any personal estate, &c., shall, during the said intended coverture, come to or vest in the said intended wife, or in the said J. B. H. in her right, or by the rights of marriage, the same shall be paid, assigned, or transferred by all proper parties unto &c." Under the will of her mother, the wife became entitled, for her separate use, to a reversionary interest in a sum of Consols. The husband died in his wife's lifetime, and before the fund came into possession. Sir *John Romilly*, M. R., held, that there was a covenant by all parties, including the wife, and that she was as much bound by it as her husband, and observed, "The

usual practice of conveyancers is to make the intended husband alone covenant, but then such a covenant is not prefaced by the words that 'it is agreed and declared by and between all the parties.' I am therefore of opinion, that this was a covenant entered into by the wife before her marriage, and that she is bound by it." It is difficult to reconcile the case of *Butcher* v. *Butcher* with that of *Ramsden* v. *Smith*, 23 L. J., N. S., 757. In the last mentioned case, the marriage-settlement contained the following clause: "And it is hereby agreed and declared, and the said F. R. [intended husband] for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [trustees], that if any real or personal estate shall at any time or times, during the said intended coverture, descend or devolve to, or vest in the said [intended wife], or in any person or persons in trust for her, or the said F. R. in her right, then and in such case, and so often as the same shall happen, he the said F. R. shall and will make, do, and execute, or cause or procure to be made, done, and executed, or join or concur with the said [intended wife], her heirs, executors, or administrators, in the making, doing, and executing of all such acts, &c.," as should be required for settling the same. A share of residue was left to the wife for her separate use; and Sir *R. T. Kindersley*, V. C., held, that the wife was not bound by the settlement to settle the property so left. In the event of any covenant existing of such a nature as to bind the married woman, the property should be settled by the

will, giving to such married woman an estate for her life, for her separate use, without power of anticipation.

In the case of a devise of an advowson, the rule of law that renders null the sale of advowsons when void should be kept in mind, especially if the testator and owner of the advowson be also the incumbent. If an advowson be devised upon trust for sale, the will should contain a power or trust for the trustee or some other person to present to the advowson if the same become vacant before a sale. In default of such power or trust, the trustees would be bound to present the person nominated by the cestuis que trust of the purchase money, and difficulties would probably arise in case there were several such cestuis que trust, or in case of the shares of such cestuis que trust being unequal. A testator by his will devised, inter alia, an advowson to trustees, upon trust, to sell and to hold the produce in trust for the testator's children, therein named as tenants in common. It was held by Lord *Cranworth*, C., and Sir *J. L. Knight Bruce*, L. J., that if the children could not agree whom to nominate for presentation by the trustees, the question was to be decided by lot; and that, being tenants in common, they were not entitled to present successively, according to seniority, as in the case of co-parceners.—*Johnstone* v. *Baber*, 25 L. J., N. S., 898.

Testators frequently desire to express a wish as to the mode in which persons benefiting by their wills shall dispose of their bounty; it must, however, be re-

membered, that the expression by a testator in his will of such a wish, may be sufficient to render the disposition desired compulsory on the devisee or legatee, unless the will expressly declare that the desire or recommendation so expressed shall not imply a trust. This being the case, little good can ever arise from such an expression of feeling, while, from the accidental omission of any words negativing such interest, the principal object of the testator's bounty may find himself entitled to but a small interest in the property of which the testator desired to make him absolute owner. If the testator, on the other hand, intend to make such disposal of the property in question compulsory on his devisee or legatee, it ought to be limited and settled for the purposes proposed, in the usual manner, confining the first taker to such an interest as the testator designs him to take. In the earlier cases on this point, the tendency of the decisions was strongly in favour of construing precatory words as a trust; and, provided that the object to be disposed of, and persons or class to be benefited, were sufficiently pointed out, almost any words of recommendation or desire were held to be sufficient to create a trust. Thus, such words and phrases as "request," "desire," "my particular wish and request," "my last wish," "recommend," "entreat," "my dying request," "not doubting," "trusting and wholly confiding," were held to be sufficient to render the devisee or legatee a trustee for the persons so recommended. The rule so laid down as to the effect of precatory words is still in force, though the doc-

trine is not now looked upon with favour; and at the present time there is little reason to expect that a trust will be implied from words of recommendation, except in cases where decided authorities have established the existence of a trust from the words made use of. The opinion of Sir *Richard Richards*, C. B., 10 Price, 265, though not a modern opinion, may be here cited to shew the views of an eminent living judge, as it was quoted and adopted by Sir *R. T. Kindersley*, V. C., in *Green* v. *Ramsden*, 1 Drew. 657: "I hope to be forgiven if I entertain a strong doubt whether, in many or perhaps in most of the cases, the construction was not adverse to the real intentions of the testator. It seems to me very singular, that a person who really meant to impose the obligation established by the cases should use a course so circuitous and a language so inappropriate, and also obscure, to express what might have been conveyed in the clearest and most usual terms—terms the most familiar to the testator himself, and to the professional or any other person who might prepare his will. In considering these cases, it has always occurred to me, that if I had myself made such a will as has generally been considered imperative, I should never have intended it to be imperative, but on the contrary a mere expression of my wish that the person to whom I had given my property should, if he pleased, prefer those whom I postponed to him, and who, next to him, were at the time the principal objects of my regard. Though I hold myself bound by the decisions and obliged to follow them, I do not con-

sider it my duty to extend the rule of construction which has been adopted in them, and to add to the number of those where the Court appears to me rather to have made than to have given effect to the wills of testators." Sir *R. T Kindersley*, after quoting the above judgment of Chief Baron *Richards*, said:—"To every word of this I entirely subscribe; and, regretting that the principle was ever established, I shall not extend it one step further than it has already gone:" 1 Drew. 650. The nature and extent of the rule in question is most clearly expressed by Lord *Langdale*, in his judgment in the case of *Knight* v. *Knight*, 3 Beav. 172, which is also adopted by Sir *R. T. Kindersley* in the before-mentioned case of *Green* v. *Marsden*:—"As a general rule, it has been laid down, that when property is given absolutely to any person, and the same person is by the giver, who has power to command, recommended or entreated, or wished, to dispose of that property in favour of another, the recommendation, entreaty, or wish shall be held to create a trust. First, if the words are so used, that upon the whole they ought to be construed as imperative; secondly, if the subject of the recommendation or wish be certain; and, thirdly, if the objects or persons intended to have the benefit of the recommendation or wish be also certain. So, if the testator gives the residue of his estate, after certain purposes are answered, to A. B., recommending A. B. after his death to give it to his own relations, or such of his own relations as he shall think most deserving or as he shall choose, it has been considered that the

residue of the property, though a subject to be ascertained, and that the relations to be selected, though persons or objects to be ascertained, are, nevertheless, so clearly and certainly ascertainable, so capable of being made certain, that the rule is applicable in such cases. On the other hand, if the giver accompanies his expression of wish or request by other words, from which it is to be collected that he did not intend the wish to be imperative, or if it appears from the context that the first taker was intended to have a discretionary power to withdraw any part of the subject from the object of the wish or request, or if the objects are not such as may be ascertained with sufficient certainty, it has been held that no trust is created. Thus, the words 'free and unfettered,' accompanying the strongest expressions of request, were held to prevent the words of request being imperative. Any words by which it is expressed, or from which it may be implied, that the first taker may apply any part ef the subject to his own use, are held to prevent the subject of the gift from being considered certain; and a vague description of the object, that is, a description by which the giver neither clearly defines the object himself, nor names a distinct class out of which the first taker is to select, or which leaves it doubtful what interest the object or class of objects is to take, will prevent the objects from being certain within the meaning of the rule."

"It seems to be now established, that there is a distinction where the words of gift are such as expressly

to point to an absolute enjoyment by the donee himself, and that in such case subsequent words of bequest, recommendation, or the like, will not operate to affix a trust on the prior absolute gift:" 1 Jarm. on Wills, 2nd Edition, 319. But, in the case of *Green* v. *Marsden*, before referred to, the judgment of the Vice Chancellor, though deciding on other grounds against the existence of a trust, did not attach the importance above referred to to the words "for her sole use and benefit." In that case the testator gave to his wife certain shares in freehold and leasehold estates, to and for her sole use and benefit. The will then proceeded, "And I beg and request, that, at her death, she will give and bequeath the same, in such shares as she shall think proper, unto such members of her own family as she shall think most deserving of the same; and I give and bequeath unto my wife all my money in the funds, and all other money that I may be entitled to, for her sole and separate use and benefit; and I beg and request, that at her death she will give and bequeath what shall be remaining, in such sums as she shall think proper, unto such members of her own and my family as she shall think most deserving and entitled to the same." By a codicil to his will, the testator bequeathed his residue to his wife. Sir *R. T. Kindersley*, in deciding that no trust was created by the will of the testator, after quoting the before-mentioned judgment of Chief Baron *Richards*, and the judgment of Lord *Langdale*, in *Knight* v. *Knight*, relied, as to the first clause of the will, on the uncertainty of the objects of gift in that

clause, observing, "Now, it is said, that the word 'family' is a word that has received a certain interpretation; and so it has, but still it is in itself a word of most loose and flexible description, it may mean the heir-at-law, though that is not its natural meaning; it may mean the next of kin, either living at the death of the testator, or living at the death of some other person; but here the testator does not use simply the term 'family,' but speaks of such members of her own and his family as his wife may think fit. Looking at the whole context, I think the case comes within Lord *Langdale's* judgment in *Knight* v. *Knight*; and that, in the second clause, the testator had no idea or intention of creating a trust, but intended his wife to have the property for her own use absolutely."

A request in a will to a devisee or legatee, to dispose in a particular way of the savings out of the property given by the will, cannot be maintained as a trust, on the ground of the uncertainty of the subject of the trust, as the right of a donee to spend the subject matter of the gift is inconsistent with the nature of a trust: *Cowman* v. *Harrison*, 22 L. J., N. S., 993. In *Reeves* v. *Baker*, 18 Beav. 372, the testator devised his residuary freehold and personal estate to his wife, her heirs and assigns, for ever, "being fully satisfied, that, if it please God to take me first, she will dispose of the same, by will or otherwise, in a fair and equitable manner to our united relations, bearing in mind that my relatives are generally in better worldly circumstances than her's are." Sir *John Romilly*, M. R., held,

that the words of the will created no trust, on the ground, that, though the subject of the trust might be said to be certain, the objects were uncertain, and the course or manner in which they were to take was left in the most perfect state of obscurity. His Honor held, that, if it were a trust at all, it was clearly a trust to give more to one set of relatives than to the other. Therefore, it was as much a trust to give more to her relatives than to his, as it was a trust at all. "The observation, therefore, which arises upon the will is this—it is obvious, that, by placing the property at her disposal in this manner, he intended to leave the whole disposition to her to do as she thought fit—that she might give it away during life or after her death, just as it should please her; only he thought it would be well for her to bear in mind that his relatives were generally in better worldly circumstances than her's were. The meaning of the words, in fact, is, that the whole was left to her entire discretion, to deal with as she thought fit. Construing these words so as to turn them into a positive and direct trust, would not advance the case a step, for it would be impossible for the Court to execute the trust, because the expression of it is infinitely too vague to indicate what the testator meant. The whole of the clause is far too obscure to enable the Court to treat it as if a trust were clearly intended."

Though the cases here cited shew the present tendency of the Court to be against construing words expressive only of a desire as a trust, yet it should be remembered, that the old cases upon this subject are

still law, though the rules laid down by them will probably not be extended. All expressions of request or desire as to the disposal by the legatee or devisee of the property given to him by the will should therefore be avoided, or should be accompanied by an express declaration, that the expression of a wish therein contained is not to be construed as creating a trust, as otherwise such expression of a wish may be found to be within the scope of some of the old cases, and be accordingly held to be sufficient to render the devisee or legatee a trustee for the objects so recommended.

In exercising a power of appointment by will, it should be remembered, that, if there be property unappointed to which the appointment can apply, such appointment will not, in default of any expression of such intention, be construed as a revocation and new appointment of property over which the testator has a power of revocation and new appointment. A. B. had a power of appointing one property among her children by virtue of a settlement of 1799, and of appointing another property among her children and their issue by virtue of her father's will. In 1847, she appointed one-fifth of the second property to one of her five children, reserving to herself a power of revocation and new appointment. In 1852, A. B., by her will, "by virtue of every power or authority whatsoever, by an indenture bearing date, &c. [the settlement], given or limited to me, or otherwise howsoever enabling me," did appoint all the real and personal estate whatsoever, which, under or by virtue of the powers contained in

the said indenture of settlement or otherwise, she had power to appoint. It was held by Sir *John Romilly*, M. R., that the effect of the will of A. B. was to revoke the appointment of 1847; and that the whole of the property devised under the will of the father of A. B. was appointed by the will of A. B.: *Pomfret* v. *Perring*, 18 Beav. 618. Upon appeal, it was decided by the Lords Justices that the power of revocation reserved in the indenture of 1847, was not exercised by the will of A. B., Sir *J. L. Knight Bruce*, L. J., observing, that "Every word of the instrument might, in his opinion, be satisfied without ascribing to the testatrix any intention of dealing with the power of revocation or the property subjected to it." Sir *G. J. Turner*, L. J., in his judgment said, "The principles acted on in other cases with respect to the exercise of powers, seem to me to apply to this. If a person has an interest in one subject and a power over another, and uses general words of disposition only, those words will not operate as an exercise of the power. It is otherwise when he has no interest, but only a power. The same principle must, I think, apply to a case where a person has a power of appointment, and also a power of revocation and new appointment. The general words of appointment ought not to be held to be an exercise of the power of revocation. If there was no power except one of revocation and new appointment, it would be different, and the general words would be then held to be an exercise of that power. I think it clear, that an intention must be shewn to revoke and undo what has

been already done. I cannot find that intention here."

There is little doubt but that the result of the law, as laid down by the Lords Justices in the case of *Pomfret* v. *Perring*, will be, in most instances, in accordance with the real intentions of testators. In the event of a testator having exercised a power of appointment as to part of a fund, reserving a power of revocation and new appointment, and subsequently desiring by will to exercise his power of appointment over the unappointed part, care should be taken that the appointment by will does not in terms extend to the part before appointed; and if the appointment by will be of sums of money to be raised out of the funds subject to such power of appointment, that the sums so appointed are not so great as to do more than exhaust the part of the trust fund not comprised in the prior appointment. Should the appointment by will appear to comprise more than the part remaining unappointed of the trust fund, the question as to the intention of the testator by such appointment by will to revoke either wholly or partially such former appointment, may be raised and may probably cause litigation.

The question soon arose whether, under the 10th section of the Act 1 Vict. c. 26, a will executed as required by that Act could be held to be a valid execution of a power of appointment to be executed by deed, or writing executed in a particular manner. Without having recourse to the provisions of the Wills Act, it has long been held that a power to appoint by deed or

writing will authorise an appointment by will. In the case of *Buckell* v. *Blenkhorn*, 5 Hare, 131, it was decided by Sir *James Wigram*, V. C., that a will executed as required by the Act of 1 Vict. c. 26, was a valid execution of a power to appoint "by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of and attested by one witness or more." The following extract from the judgment of Sir *J. Wigram* will shew the grounds of his decision: "Before the Wills Act, the word 'writing,' in cases like the present, had received a judicial interpretation, which included a will. But the Courts held, that they could not dispense with the formalities prescribed by the instrument creating the power—although they were not necessary to the validity of a will—because those forms, being in themselves without value, could have no equivalent. Now, by the late Statute of Wills, it is provided, that, in the execution of wills, one given form shall be observed, and that such form shall be an equivalent for every arbitrary form of execution which the donor of a power may prescribe. It was not at the expense, but in favour and for the benefit of such donors, and in order that their intentions might not be disappointed by the neglect of useless forms, that this legislative provision was made." The question was for some time considered as settled by the case of *Buckell* v. *Blenkhorn*; and in the case of *Collard* v. *Sampson*, 16 Beav. 543, which was a case in which a power to appoint by writing under hand and seal was attempted to be executed by a will duly exe-

cuted as a will, but not under seal, Sir *J. Romilly*, M. R., though expressing great doubt as to the propriety of the decision in *Buckell* v. *Blenkhorn*, treated the question as settled by that case. Upon appeal, the Lords Justices, 4 De G. M. & G. 224, without directly overruling the case of *Buckell* v. *Blenkhorn*, held, that the question as to the validity of such an appointment was such, that a purchaser ought not to be compelled to take a title depending on the validity of such an appointment: Sir *G. J. Turner*, L. J., observing, "I do not mean to give any opinion as to the correctness of the conclusion arrived at in the case of *Buckell* v. *Blenkhorn;* but I think it would be going too far, to hold that the law upon this point can be considered to be finally settled by that case. To assume that a power to appoint by 'any writing' is identical with a power to appoint by 'will,' is in truth to assume the whole question upon the construction of an Act of Parliament —a question, it seems to me, open to very serious doubt." The question was again raised in the case of *West* v. *Ray*, 1 Kay, 385, which arose upon the same instruments as were the subject of the case of *Collard* v. *Sampson*, and Sir *William Page Wood*, V. C., after considering the case of *Collard* v. *Sampson*, decided that the power had not been duly executed. The Vice-Chancellor, in giving judgment, said, "I cannot hold that this power has been duly executed, but, at the same time, I must add that I fear, in nine cases out of ten, the intention both of the donor and of the party executing the power, who of course intends to execute

it effectually, will be defeated by such a decision. But the legislature might have provided for such a case, and has not done so. I find in this settlement a power not to appoint by will at all, but by deed or writing, with certain required solemnities. The decisions on this point before the statute were, in effect, that the donor of the power had thought the character of the writing, whether it should be testamentary or inter vivos, not of the essence of the case. All he had thought essential were the solemnities with which the power was to be exercised; and provided they were observed, it was indifferent whether the instrument by which the power was exercised were a will or a deed; and when it was exercised by will, though the instrument is a will and revocable, yet, being executed with all the required ceremonies and being within the words of the power, it was held to be a good execution of the power. But when the donor has made the required solemnities essential to the power, and has not stated that it is to be exercised by will, but only by deed or writing, can I hold that it falls within the 10th section of the statute 1 Vict. c. 26? Where the instrument is a matter of form, and the required solemnities are the substantial requisites, is not the same case as where the instrument is the substance of what is required by the power, and the solemnities are the accessories, which is the state of circumstances to which the statute applies."

The result of the decision in *West* v. *Ray*, which judgment has not been appealed from, is to throw

doubt over the validity of a great number of appointments by wills executed in the usual manner, which had been made relying on the decision in the case of *Buskell* v. *Blenkhorne;* and in the case of future wills this decision renders it necessary to ascertain what powers of appointment are vested in the testator, and in what manner the powers are to be executed. If it cannot, at the time of executing the will, be ascertained in what manner any powers of appointment vested in the testator are required to be executed, it will in many cases be wise to cause the will to be sealed and delivered, as well as signed, and to be attested by three witnesses, to provide against the chance of the power being required to be executed by deed, or writing so attested; the number of witnesses required in the case of such a power being equally a substantial requisite, as sealing and delivery may be for the due execution of such power.

In the case of the wills of many living persons assuming to exercise powers of appointment, it will be desirable to see that such wills have been executed so as to comply with the requisitions of the powers of appointment thereby assumed to be exercised; and if such appointments have not been duly executed, such wills should be re-executed in the manner required for the due execution of such powers. No will should, however, be re-executed without being carefully perused with reference to any changes that may have taken place since the original execution of such will, either in the subject given or appointed thereby, or in the

objects of any such gift or appointment; and all necessary alterations, if any, should be made in the fresh copy prepared for execution.

The intentions of the testator having been clearly ascertained, and being such as the law will carry into effect, the experience of the draftsman will enable him to insert all such powers and provisions as the testator may have omitted to mention, but which have been found to be requisite or desirable, to enable the various purposes of the will to be carried out with ease and safety, without having recourse either to the Court of Chancery, or to the more extreme measure of a private Act of Parliament. The first object, after considering the persons to be benefited by the proposed will, and the various shares and contingencies in which they are to take, is to provide for the safe investment and management of the property in question, until some person shall become absolutely entitled to it.

For this purpose, ample power should be given to the trustees to be named in the will, for the collection and investment of personal estate, and, when thought desirable, for the sale or exchange of real estates; as, if no such powers be given by the will, the trustees have no power to select any mode of investment for personal property of the testator other than property invested on real security at his death, than 3*l.* per cent. Consols. And no exchange of real estate held for a limited interest under a will can be made except under the powers of a private Act of Parliament; and no sale of such real estate can be made except under the pow-

ers of a private act of Parliament, or under the authority of the Court of Chancery under the Act of 19 & 20 Vict. c. 120, the purposes and powers of which Act, and the extent to which it enables testators to dispense with the insertion of powers heretofore usually inserted in wills of real estate, will be hereafter considered. The power of investment is now not unfrequently made to comprise investment on railway shares or stock, and on loans to railway or other companies. The shares or stock of any company, however well established or prosperous, do not appear to form a desirable investment for trust property, and the result of authorising such investment would not unfrequently be to expose the trustees to solicitations from the persons for the time being entitled to the receipt of the annual produce of the trust funds, to select the investment which at the moment offered the largest prospect of present income; and as trustees generally and naturally are guided by the wishes of the cestuis que trust, who appear most immediately interested, the investments so recommended, whether on the whole desirable or not for the final purposes of the testator's will, would in very many instances be made. Investments on the debentures, loan notes, or other securities of railway companies do not appear liable to the same objections, and it is conceived that trustees should in most cases be authorised so to dispose of the trust funds.

Preference or guaranteed stock or shares of railway companies may be thought also to furnish a mode

of investment which trustees may reasonably be empowered to choose, such preference stock or shares appearing to be free from most of the objections which exist to the investment of trust funds in ordinary stock or shares. It may be doubted whether it is generally desirable to specify any particular railway or other company, the shares, stock, or security of which the testator may think a safe or desirable investment for the funds subject to the trusts of his will; the alterations which such companies undergo in the course of a few years by amalgamation with other companies and by extensions, would in very many cases disincline conscientious trustees to lay out trust money upon an investment, the nature of which has varied greatly since the date of the testator's will: and if the railway company pointed out by the will has, since the death of the testator, become amalgamated with any other company, it is conceived that the powers of investment applicable to such first-mentioned company would not be held to extend to such amalgamated company.

If, as is not unfrequently the case, the testator be desirous that no part of his property be invested on mortgages of land in Ireland, the will should expressly exclude Ireland in the power of investment, as by the Act 4 & 5 Will. 4, c. 29, it has been enacted, s. 2, "that it shall be lawful for any person or persons, who under or by virtue of any direction, trust, or power, shall be authorised or directed to lend money at interest on real securities in England, Wales, or Great Britain, to lend the same or any part thereof, at inter-

est, on real securities in Ireland, in the same manner in all respects as if such investment had been expressly authorised in or by such direction, trust, or power as aforesaid: and such person shall not be considered guilty of a breach of trust, or held accountable, further or otherwise than if the money had been laid out by him or them on real securities in England, Wales, or Great Britain." The 2nd section of the Act provides, "that all loans of money on real securities in Ireland under this Act, in which any minor or unborn child, or person of unsound mind, is or may be interested, shall be made by the direction and under the authority of the Court of Chancery in England, such direction being obtained in any cause upon petition, in a summary way." The 4th section provides, "that every such loan be made with the consent of the person or persons, if any, whose consent may be required as to the investment of such money upon real securities in England, Wales, or Great Britain, testified in the manner required by such direction, trust, or power." The 5th section provides, "that the provisions of the Act shall not apply to any case in which such direction, trust, or power, shall contain any express restriction against the investment of such money in securities in Ireland." It may be here observed, that it has been decided, that the words in the 2nd section "in any cause upon petition, &c." must be read "in any cause or upon petition." *Ex parte French*, 7 Sim. 510. It will be observed, that the effect of the 2nd section of this Act is to compel the trustees to

apply for the permission of the Court of Chancery in the case of a minor, unborn child, or person of unsound mind being interested in the trust monies. The trust for investment should therefore not be silent as to Irish investments, but should either distinctly authorise them, so as to avoid the expense of an application to the Court, or distinctly forbid such investments. In many cases it will be thought desirable to authorise the loan of money on Irish securities. As trustees, when empowered to lend money on mortgage, are, in the absence of a special provision to the contrary, only considered as empowered to lend upon a first mortgage, it is most probable that a very large proportion of the trust money which may be invested on Irish security, will be laid out on the security of lands recently purchased in the Encumbered Estates Court; which lands, both from the security and simplicity of the title, and from the fact of their actual value having been ascertained by recent sale, afford a security for money advanced upon them free from most of the objections which formerly induced testators to forbid the investment of their property on Irish securities.

It will be observed that the Act 4 & 5 Will. 4, c. 29, in no way authorises the investment of trust monies in the purchase of lands in Ireland, and until recently, except in the case of persons entitled to Irish property, the purchase of Irish estates was seldom either permitted or intended by English testators, and consequently that a special Act of Parliament would be required to authorise the investment in the purchase

of lands in Ireland of monies liable to be laid out in the purchase of lands in Great Britain. From the increased facilities that now exist for the purchase of land in Ireland, and from the increasing popularity of such investments in this country, it is desirable either to authorise the investment of trust funds in such purchases, or distinctly to call the attention of the testator to the question whether he do or do not desire such power to be given to his trustees.

Ample powers of sale and exchange should be inserted in wills settling real estate. Such powers are generally to be executed with the consent of the tenant for life for the time being if of full age, and during the minority of any such tenant for life in possession at the discretion of the trustees for the time being of the will. A power for the person executing such power of sale to receive and give receipts for the purchase money of the estates sold should by no means be omitted. The trusts of the money to arise by, or to be received for, equality of exchange are generally declared to be the purchase of other estates to be settled to the same uses as the estates sold or given in exchange. These powers are among the most essential in a will of real estate, and except under special circumstances should never be omitted in any will creating any settlement of real estate.

When any lands are devised by will for any less interest than an estate in fee simple or in tail in possession, powers of leasing, and, if thought desirable, powers of sale and exchange, and, in the case of a devise

of a manor, powers of enfranchisement, should be inserted. Until the passing of the "Act to facilitate Leases and Sales of settled Estates," 19 & 20 Vict. c. 120, powers of sale or of leasing, if omitted by the will or other instrument creating the settlement, could only be obtained by means of a private Act of Parliament. By sect. 2 of the Act in question, the Court of Chancery is empowered to authorise agricultural or occupation leases for twenty-one years, mining leases for forty years, and building leases for ninety-nine years, or for more than ninety-nine years where it is the custom of the district to grant building leases for longer terms. And it is by the same section provided, that, in the case of mining leases so to be authorised, where the person entitled to the receipt of the rent is entitled to work the minerals for his own profit, one-fourth part, and otherwise three-fourth parts of the rent, shall be set apart and invested. By sect. 10, the Court of Chancery is authorised to vest powers of leasing, in accordance with the Act, in any person. By sect. 11, the Court is empowered to authorise a sale of any settled estates, or of any timber, not being ornamental timber, growing on any settled estate. By sect. 14, the Court is empowered to direct, that any part of any settled estates shall be laid out for streets, squares, &c. Sect. 16 provides, that application to the Court for the exercise of any of the powers of the Act may be made by any person entitled for a term of years, determinable on his death, or for an estate for life or any greater estate. By sect. 17, it is provided,

that every such application must be made with the consent of the following parties: "where there is a tenant in tail under the settlement in existence, and of full age, then the parties to concur or consent shall be such tenant in tail; and if there is more than one such tenants in tail, then the first of such tenants in tail, and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail; and in every other case, the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child." The 17th section empowers the Court to give effect to any petition subject to, and so as not to affect, the estate or interest of any person entitled to an estate of inheritance whose consent shall be refused or cannot be obtained. It appears, that, although the Act in question will, in many cases, render unnecessary the great expense of an application to Parliament to supply the omission, in a will, of powers of leasing or of sale, it is desirable, in order to avoid the cost of an application to the Court of Chancery, to continue to insert the usual powers of leasing and of sale and exchange, as before the passing of the Act, except, perhaps, that, in the case of a devise to a person of full age, for life, with remainder in fee simple or in tail, it

may not now be necessary to give a power to such tenant for life to grant leases for terms not exceeding twenty-one years, the 32nd section authorising any person entitled for an estate for life or for a term of years determinable with his life, or for any greater estate, either in his own right or in right of his wife, (unless the settlement shall contain an express provision that it shall not be lawful for such person to make such devise), to demise the settled estates or any part thereof, except the mansion-house and the demesnes thereof, for twenty-one years, at rack rent.

Sect. 36 provides, that "All powers given by this Act, and all applications to the Court under this Act, and consents to such applications, may be exercised, made, or given by guardians on behalf of infants, and by committees on behalf of lunatics, and by assignees of bankrupts or insolvents. Provided, nevertheless, that, in the case of infants or lunatic tenants in tail, no application to the Court or consent to any application may be made or given by any guardian or committee without the special direction of the Court." It will be observed, that the Act contains no powers of exchange, and that, in the case of mining leases granted under the authority of this Act, a portion of the rent is directed to be set apart and invested. The power given to guardians of infant children to consent to leases and sales to be authorised by the Act should be borne in mind in the selection of guardians in cases where the usual powers of leasing and of sale and exchange are omitted. By the "Copyhold Act,

1852," 15 & 16 Vict. c. 51, powers are given for the tenant of copyholds or for the "lord" of any manor to compel enfranchisement of any copyhold lands after the next admittance to take place after the first day of July, 1853. And the interpretation clause of that Act, sect. 5, enacts that the word "lord" shall extend to and include "the lord or lords of any manor, whether seised for life or in tail or in fee simple, and all lords seised of any manor, whether they have or have not an absolute power of selling or disposing of the same." The provisions of this Act are very carefully framed, and the Act is believed to work well and usefully. It is still however desirable, in order to avoid the necessity of observing the various forms and incurring the expenses attending an enfranchisement under that Act by persons having only a limited interest, that powers of enfranchisement should be inserted in wills as before the passing of that Act. The nature and extent of the powers of leasing to be inserted should be carefully considered with reference to the property to be devised, and with reference to the custom of the part of the country in which such property is situate. In some parts of England, powers to grant building leases for a term of years would not be sufficient, the usual course being to convey the property proposed to be built over to the use that the vendor shall receive a rent-charge, with powers of distress and entry for securing the same, and subject thereto to the use of the builder in fee. In all cases of devises of real estate other than devises in fee simple, except as before mentioned in the case of a

devise to an adult tenant for life, with remainder to an adult in fee or in tail, it is desirable to insert the power of leasing for twenty-one years at rack-rent.

It has long been a settled rule, that, in the absence of any expression to the contrary in the will disposing of the property in question, where personal property is bequeathed for life with remainders over, and not specifically, or so as to imply an intention that the personal property in question should be enjoyed in specie, all personal property, other than money invested on real security, ought to be called in and converted into money, and the money arising from such calling in and conversion ought to be invested in Consols; and that the tenant for life would be held to be entitled only to the dividends on the Consols so to be purchased, *see Howe* v. *Earl of Dartmouth*, 7 Ves. 137. Whether the testator intended by his will to give to the tenant for life the enjoyment of any part of his personal property in specie, must, in every case, be collected from the terms of the will.

In *Vaughan* v. *Bach*, 1 Ph. 75, a testator gave to his wife the whole of his property during her life; and after certain legacies and specific bequests, the testator continued :—"The property, my house in ——, £1000 New 4*l.* per cent.; £1500 in the 3*l.* per cent. Consols, £645 in the Threes Reduced, and £20 per annum in the Long Annuities, all this I give to my wife, with the residue and interest, should there be any." The testator was not possessed of any 4*l.* per cent. stock at his death. It was held by Lord *Cottenham*, C., varying

the decree of Sir *L. Shadwell*, V. C., (who had decided that the property mentioned in the last-quoted paragraph of the testator's will formed part of the residuary personal estate of the testator, and should accordingly be sold and the purchase-money invested in the purchase of Consols), that the widow was entitled to the enjoyment of the leasehold premises mentioned in the will, and the £20 Long Annuities in specie, during her life.

The cases mentioned in the next few paragraphs, will shew the nature of the grounds upon which the enjoyment in specie of personal property has been given to or withheld from a tenant for life. Without venturing upon any criticism of any of the cases quoted, it may be remarked that the various decisions shew, most clearly, the necessity of distinctly declaring the testator's intention as to the enjoyment or non-enjoyment in specie of any personal property, a life interest in which is limited by the will. And in considering, in such or in any similar case, whether a declaration of intention on the part of the testator is required, or whether such intention appears sufficiently from the terms of the will, it must be remembered that the persons upon whom responsibility for any erroneous judgment will be thrown, are the testator's trustees or executors, who are primarily liable to the residuary legatees for any breach of trust in permitting trust funds to remain unconverted and uninvested. And that such trustees and executors for their own safety, in the absence of a distinct expression of the testator's wishes,

will probably be advised not to permit any part of the testator's personal estate to be enjoyed in specie by any person to whom a limited interest therein is given, except under the direction of the Court of Chancery; and that the costs occasioned by such recourse to the Court of Chancery will be defrayed out of the testator's estate.

When property of any kind is devised or bequeathed to trustees upon trust to sell and to invest the proceeds, the trustees will be answerable for any loss that may arise from neglecting or unduly delaying to make such sale and investment; and in case any gain has arisen to the trust funds from the omission or delay in the sale of part of the trust property, such gain will not be allowed to be set off against any loss incurred in respect of such neglect or delay in the conversion and investment of such other part of the trust funds. And even if no loss be incurred by such delay or omission, if the trustees permit the tenant for life or other person having a limited interest in the trust funds to receive the produce of such funds, and such produce be more than such funds would have yielded if invested in accordance with the trusts of the testator's will, the trustees will be liable to make good to the persons entitled in remainder the full difference between the income so received by the person having a limited interest, and the income which such person would have received if the investment directed by the testator had been duly made. This rule ought to be borne in mind in cases where the testator is possessed of railway shares or stock, or

other property liable to great fluctuations in value; and if thought desirable, the will should contain full powers to postpone any sale or investment; and explicit directions should be given as to the application of the produce of such property until the same be sold. The case of *Dimes* v. *Scott*, 4 Russ. 195, shews most forcibly the strictness with which the Court of Chancery enforces these rules, and the consequent necessity of providing in the testator's will for the case of an immediate sale and investment being thought likely to be undesirable. In *Dimes* v. *Scott*, a testator bequeathed his residuary personal estate to trustees, upon trust to convert the same into money and to invest the proceeds upon government or real securities, and to pay the annual produce to the testator's wife for her life, and after her decease to stand possessed of the principal in trust for E. W. Part of the testator's property consisted of a sum of money invested on a loan to the East India Company, bearing interest at 10*l.* per cent., the shares in the loan being transferable. The trustees did not sell the East India stock, but allowed the widow to receive the dividends from the testator's death till the loan was paid off, and they then invested the amount in Consols; the result of the delay being that the sum of money in question purchased a larger sum of Consols than would have been procured if a sale of the East India Stock and an investment of the produce in Consols had taken place at the death of the testator.

It was held by Lord *Gifford*, M. R., and confirmed

on appeal by Lord *Lyndhurst*, C., that the trustees ought to be charged with the whole of the Consols actually purchased, and with all the dividends received on the East India Stock; and that they were only to be allowed in their discharge, as payments to the tenant for life, a sum equal to the dividends on such a sum of Consols as would have been purchased if the East India Stock had been sold, and the money produced by such sale had been invested in Consols at the end of a year from the testator's death. The main principle laid down in the case of *Dimes* v. *Scott* has been ever since maintained; but various opinions have been expressed by different judges as to whether, in the case of trustees having an option to invest trust funds in Consols or on other security, and neglecting to make such investment, they were liable to be charged with the amount of Consols which might have been purchased if the investment had taken place at the time directed by the will creating the trust, or were bound to replace the trust monies which ought to have been invested, together with interest for the same.

In the case of *Robinson* v. *Robinson*, 1 De G. M. & G. 247, the testator gave his residuary personal estate to his executors, upon trust, with all convenient speed, to convert the same into money, and to invest the net amount thereof upon any of the Parliamentary stocks or funds, or on real securities at interest. The testator's residuary personal estate consisted of 3*l*. per cent. Stock, Bank Stock, London Dock Stock, Turn-

pike Bonds, and Sewers Bonds. The executors paid the produce of all these funds to the tenant for life, for eight years from the testator's death, and then sold the Bank Stock, Dock Stock, and Sewers Bonds, and invested the produce of such sales in Consols. It was held by Lord *Cranworth*, L. J., and Sir *J. L. Knight Bruce*, L. J., varying a decree of Lord *Langdale*, M. R., who had decided that the tenant for life was entitled only to a sum equal to the dividends on the Consols which might have been purchased, at the expiration of one year from the testator's death, with the said personal estate of the testator, if the same had then been converted into money; that, as to the Bank Stock, Dock Stock, and Sewers Bonds, the tenant for life was entitled, from the end of the first year after the testator's decease up to the time of the sales and investments in 3*l.* per cents., to interest at 4*l.* per cent. on the amount which those funds would have produced at the end of the year, not exceeding the amount of interest and dividends actually produced; and that the Turnpike Bonds were real securities, on which, by the terms of the will, the executors were justified in leaving the testator's assets invested. In giving judgment in this case, Lord *Cranworth* observed, "We think it right to remark, that our decision does not at all go to exonerate a trustee, who, by the express terms of his trust, is bound to invest in 3*l.* per cents., but who has retained a balance in his hands, from the obligation to account for those balances, with interest, instead of making good the

amount of 3*l.* per cents. whenever the 3*l.* per cents. have fallen instead of risen in value. In such a case, the same principle applies, which authorises the cestuis que trust to adopt any investment in trade or otherwise, which has been actually made. He may insist on having the 3*l.* per cents., for it was the duty of the trustee so to invest the trust monies. But he may, on the other hand, if no such investment has been made, treat the money as being, according to the fact, in the hands of the trustee, to be accounted for by him." In *Bate* v. *Hooper*, 5 De G. M. & G. 338, the testator gave the residue of his estate to trustees, upon trust, immediately after his decease, to convert all his personal estate into money, and to invest the amount in the Bank of England, and to permit the testator's daughter to receive the rents and profits of his real estate, and also the rents, profits, dividends, or other annual produce of his personal estate, for her life. The testator was possessed of a sum of £24 per annum Long Annuities, and it was held by Lord *Cranworth*, C., varying the decree of Sir *John Stuart*, V. C., that the trustees of the testator's will were guilty of a breach of trust in permitting the daughter to receive the Long Annuities; and that the trustees were liable to make good as much Consols as would have been produced by the sale of the Long Annuities at the end of one year after the testator's death. It was also held, that the daughter was not bound to refund the sums which she had received in excess of what she had been entitled to. As the tenant for life will be entitled to

the produce of any personal property specifically bequeathed to him for his life; so, if any part of the testator's personal property be, in accordance with the will, retained in an unproductive state, the tenant for life will not be entitled to any interest on the property so kept unproductive. In *Mackie* v. *Mackie*, 5 Hare, 70, the testator gave his real and personal estate to trustees, upon trust for sale and conversion of the same into money with all convenient speed, with a direction that the time and mode of sale should be left entirely to the discretion of his trustees or trustee for the time being, and upon trust for investment in Government or real securities; and with a direction, that, until such sale, the rents and income of his real and personal estate remaining unsold should be paid and applied in the same manner as was therein provided with respect to the dividends, interest, and annual income of his real and personal estate, after such investment thereof as thereinbefore mentioned. A part of the testator's property consisted of a reversionary interest in a sum of Consols. The Master found, that it would not be for the benefit of the estate that the reversionary interest in the Consols should be sold. It was held by Sir *James Wigram*, V. C., that the tenants for life under the will were entitled to the income actually produced by the residuary estate during the interval before the sale or realisation of such estate; but that they were not entitled to any interest on the value of the reversionary interest. The Vice-Chancellor observed in his judgment, "I cannot apply different rules to

different parts of the property, according as it may be more or less productive, from the accidental circumstances of trade, from dividends, or from other circumstances. The non-conversion of one part of the property is beneficial to the tenant for life—the non-conversion of another part is beneficial to the remainder-man. I must presume that the testator made his will, and allowed it to speak at his death, with reference to his knowledge of the state of his property. In modern cases, circumstances, apparently trifling, have been held sufficient to entitle a tenant for life to the enjoyment in specie of the residue for his life; and in this case, there is no reason why I should refuse to follow the words of the testator's will, until his property is actually converted, provided such conversion is not improperly delayed." It is hardly necessary to observe here, that the words last quoted, "provided such conversion is not improperly delayed," may be considered as repeated in every case upon this subject. Should the delay in converting and investing any part of the testator's estate appear to the Court to proceed from collusion between the trustees and any person entitled under the will, or from any other reason than from a bonâ fide exercise of the discretion reposed by the will in the trustees, the Court will act so as effectually to prevent any such improper delay from being continued, and will throw all the loss occasioned by such delay, and all the costs occasioned thereby, on the parties causing such delay.

The observations of Lord Justice *Turner*, in the case

next quoted, will shew the principles upon which the Court proceeds in cases where property is left to trustees to convert into money, but upon trust to invest upon securities other than Consols :—

In the case of *Band* v. *Fardell*, 25 L. J., N. S., 21, it was decided by the Lords Justices, overruling a decree of Sir *John Romilly*, M. R., that, a testator having by his will directed his executors with all convenient speed to make sale and dispose of his residuary estate, and invest the money arising therefrom "in Government or other good and sufficient security," no breach of trust was committed by the executors' permitting a sum of Navy *5l.* per cent. Annuities, of which the testator died possessed, to remain unconverted into money, and permitting the tenant for life to receive the dividends on such Navy *5l.* per cents. and on the stock into which the same was, from time to time, converted by Act of Parliament. Sir *G. J. Turner*, L. J., observed in his judgment, "It has been said that the case is governed by the observations of Lord *Eldon* in *Howe* v. *The Earl of Dartmouth*, that 'what the Court will decree, it expects from trustees and executors;' but when that case is looked into, it appears that there was no trust for investment; and Lord *Eldon's* observations must be understood to have been made with reference to the state of the facts in the case before him. The effect of the words, therefore, was, that, where there was no trust for investment, the Court would itself have invested in Consols, and therefore would expect that trustees would do what the

Court would have done, and rendered the property productive by investment in Consols. It is to be observed that this Court will not encourage the investment upon mortgage; and where the power authorises it, the Court requires a special case to be made out for such a mode of investment: but still, if the power be to lay out upon Government or real securities, it has never been suggested, that trustees are to be held liable if they invest on mortgage, merely upon the ground that the Court would not have so directed. In the case now before the Court, there is no imputation of unfairness against the executrix (who was also the tenant for life), and she did no more than leave the fund in the state of investment in which she found it."

Railway shares, though not a perishable commodity, must be converted into Consols as between the tenant for life and the remainderman. A testator, by his will, after giving certain legacies, proceeded: "The residue of my property, of every description it may be at my death, I bequeath the interest and proceeds thereof" to E. and S. C. "for their lives." And after their deaths the testator gave "the interest and proceeds of the said residue" to other persons successively for life; and after the decease of the survivor the testator "bequeathed the said residue" to other persons. It was held, that the ultimate legatees under the will were entitled to require railway shares of which the testator died possessed to be converted into Consols. Sir *John Romilly*, M. R., said: "It has been settled to be the invariable course of the Court, when any one

interested in the property requires it, to order the property to be got in and invested in 3*l.* per cent. Consols. The Court held such to be the right of the parties entitled even prior to the determination of the case of *Prendergast* v. *Lushington*, 5 Hare, 171, and 3 House of Lords Cases, 195. There the trustees had the absolute discretion to leave the property in its present state of investment; and the trustees having refused to exercise the discretion, the Court required the property to be got in and invested:" *Thornton* v. *Ellis*, 15 Beav. 193.

The duties of trustees as to converting into money the estate of the testator, and the extent to which the Court will incline in favour of a gift in specie to the tenant for life, may be collected from the case of *Hood* v. *Clapham*, 19 Beav. 90. A testator gave unto trustees all his freehold, copyhold, and leasehold estates, and all other real and personal estate and effects whatsoever, upon trust to call in and collect and receive all monies due to the testator on mortgages, bonds, or other securities, and rents, and, after payment of debts and legacies, to invest the residue in the public stocks or funds. And as to one-half part of "my said freehold, copyhold, and leasehold estates, and all the said trust monies, stocks, funds, and securities, and all other my real and personal estate, upon trust during the life of my daughter E. S. to pay the rents, dividends, and annual income into her proper hands; and after the decease of the said E. S., upon trust, during the life of S. M., to pay the rents, dividends, and annual income

of such half part or share of my said real and residuary personal estate unto my said daughter S. M., for her life. And after the decease of my said daughter S. M., the inheritance and capital of such half part of my said residuary real and personal estate shall be in trust for "her children" as therein mentioned. Part of the testator's estate consisted of terminable government annuities and of annuities for years charged on parish rates; these were not converted but the income was received by the tenants for life. Sir *John Romilly*, M. R., held, that it was the duty of the executors to have converted and invested in the funds the whole of the property (other than the leaseholds which were expressly given to the tenants for life for their lives) within the period of one year after the death of the testator. The distinction as to the leaseholds and the rest of the testator's personalty, will appear from the judgment. The Master of the Rolls said, "It seems to me that the testator makes a distinction between his real estate (including therein his chattels real), and all the rest of his property." After quoting the will, his Honour continued: "The real estate is already specified, it consists of the freehold, copyhold, and leasehold estates; the residuary personal estate includes the whole of the rest, and the inference to be drawn from that would be, that the residuary personal estate was to be so invested in the public stocks and to be held in trust for the children.

"If I were to hold, that, in consequence of a direction to get in the monies due to him" on mortgage, bonds,

or other securities, "no other portion of the personal estate ought to be converted, I should be giving to the tenants for life, as a specific legacy, all the personal estate not previously specified; and the result would be, that they would enjoy the perishable articles for their absolute use in specie." The executors having overpaid the tenants for life, they were held bound to recoup what they had been so overpaid.

In the case of gifts depending upon marriage or any event which may take place in the testator's lifetime, the recent case of *Bullock* v. *Bennett*, 24 L. J., N. S., 397, 512, should be borne in mind in considering the effect of the 24th section of 1 Vict. c. 26. In *Bullock* v. *Bennett*, a testator, by will dated 1852, bequeathed certain funds to trustees, upon trust to pay the income to his daughter, a widow, for her life or until her marriage, and after her decease or marriage, which should first happen, upon the trusts therein mentioned. The widow married after the date of the will in the lifetime of the testator, who was aware of the marriage. And it was held by the Lords Juctices, overruling the decision of Sir *W. P. Wood*, V. C., that the widow so marrying again was not entitled to the income of the funds, but that the gift over on her death or marriage came at once into operation. Sir *G. J. Turner*, L. J., observed in his judgment: "The point to be ascertained in the case is, whether the testator is referring, in the language which he uses, to the state of circumstances as they existed at the date of his will, or as they might exist at the time of his death. I

state advisedly, that, in my judgment, this is the point, notwithstanding the late Wills Act 1 Vict. c. 26, by the 24th section of which it is enacted, that 'every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.' It is with reference to the real and personal estate comprised in it, that the will is to speak as if executed immediately before the death of the testator; and I understand this to mean, that it is to speak as if executed immediately before the testator's death, not with reference to the objects of his bounty, but with reference to the real and personal estate to be taken by those objects." These remarks of the Lord Justice *Turner* on the 24th section of the Wills Act must be kept in mind in considering that section; as the enactment, when construed according to the judgment of the Lord Justice, has certainly a more limited effect than would appear from the general meaning attached to the words in the section in question.

The subject of illegal devises is one of great importance and calls for strict attention from the draftsman. Were the directions of the testator strictly followed, from the very general desire that exists to tie up property for the longest possible period, a very large number of devises would be void for remoteness, or as tending to a perpetuity. The whole subject having been treated at length in Jarman on Wills and other

text-books, it may be sufficient briefly to notice a few of the principal points to which the draftsman's attention should be directed.

The rule of law, which forbids the creation of an estate depending upon a possibility, as it is termed, is, perhaps, from its influence upon all wills settling property in strict settlement, the most important. The effect of this rule is, to prevent a testator from devising his estate to the unborn child of an unborn child, the law refusing to permit property to be tied up in expectation of the double event of the birth of a child, and of that child himself becoming a parent. It is in compliance with this rule that almost all wills settling family estates are framed. The children or remoter issue born in the testator's lifetime are restricted to life estates, but the children of such tenants for life are made tenants in tail or in fee simple, the rule in question preventing any devise in favour of the remoter issue of the tenants for life, who must take, if at all, by descent from their parents. The beneficial nature of this rule, which in fact renders real property capable of being dealt with in the course of each generation, is manifest at once. Another most important rule is that which forbids the vesting of property being suspended for more than a life or lives in being and twenty-one years. It was long a question, whether the twenty-one years during which vesting may be suspended, did not refer to the minority of the person to take; it is now, however, well-established that the twenty-one years in question are an absolute term. In

short, the extreme period during which the absolute ownership of property may be suspended, (an estate in tail being considered as equivalent to the absolute ownership), is for any number of lives in being and twenty-one years after the expiration of the last life, a child in ventre sa mere being for this purpose considered as if actually born.

Devises and bequests for charitable purposes are a fruitful source of litigation. It may be well to consider here, very briefly, the present state of the law, both as to the construction of charitable bequests when made to take effect out of pure personalty and unaffected by any question as to any trust relating to land, and as to bequests for charitable purposes affected by the Mortmain Act, 9 Geo. 2, c. 36. The Act 43 Eliz. c. 4, "to redress the misemployment of lands, goods, and stocks of money heretofore given to certain charitable uses," describes "relief of aged, impotent, and poor people, maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, repair of bridges, ports, havens, causeways, churches, seabanks, and highways, education and preferment of orphans, relief stock, or maintenance of houses of correction, marriages of poor maids, supportation, aid, and help of young tradesmen and persons decayed, relief and redemption of prisoners or captives, aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes," as charitable uses; and by subsequent decisions, gifts for the erection of waterworks for the use

of the inhabitants of a town, or to be applied for the good of a place, or for the general improvement of a town, or for the establishment of a life boat, or of a botanical garden, to the trustees and for the benefit of the British Museum, to the widows and orphans or the poor inhabitants of a parish, to churchwardens in aid of the poor's rate, or the widows and children of seamen belonging to a port, or for preaching a sermon, keeping the chimes of the church in repair, playing certain psalms, and paying the singers in church, or for building an organ gallery in a church, or endowing or erecting a hospital, or for deserving literary men who have been unsuccessful, or for letting out land to the poor at a low rent, or for the increase or encouragement of good servants, or for the benefit of ministers of any denomination of Christians, or for the benefit, advancement, and propagation of learning in every part of the world, and gifts in aid of the public revenue of the state, and finally gifts for any other purpose, either of a public or of a religious nature, have been respectively held to be charitable: Jarm. on Wills, 2nd edit. vol. 1, p. 173. And if property be given by will to charitable purposes, although the immediate charitable purpose intended by the testator should prove to be illegal or impossible, or should not be sufficiently defined, or if the special charitable purpose should not be named by the testator, or if the persons to whom the legacy be given for charitable purposes should refuse to receive it, the main intention of the testator being considered to be charity, that intention

will be carried out, and the property so given for charity will be administered for charitable purposes by the Crown in cases where no trustees have been named by the testator, and by the Court of Chancery where trustees have been named: whether administered by the Crown or the Court of Chancery, the funds will be applied for purposes as near as may be to the purposes intended by the testator, but which have failed or become impossible. It must be remembered, that, although bequests for charitable purposes are regarded by the Court with greater favour than any other bequests, and are carried out, as far as possible, in cases where other bequests would be held to have failed, yet these bequests are treated by the Court in one respect in a manner which places them at a great disadvantage as compared with other legacies. The principle of marshalling assets will not be applied in favour of a charitable legacy, nor will the donor of a legacy for charitable purposes be permitted to resort exclusively to the pure personalty of the testator, even if the pure personalty be sufficient to pay all debts and legacies including the charitable legacies, but the charitable legacy will be apportioned pro ratâ between the pure personalty and the real estate, including leaseholds and mortgages of the testator, and so much of the charitable legacy as but for the operation of the Statute of Mortmain would have been payable out of such real estate, will absolutely be void. In bequeathing legacies for charitable purposes, a direction should therefore never be omitted for the payment of the legacies ex

clusively out of such part of the testator's estate as he can by law bequeath for charitable purposes.

The Mortmain Act, 9 Geo. 2, c. 36, enacts, that "no manors, lands, tenements, rents, advowsons, or other hereditaments, corporeal or incorporeal, whatsoever, nor any sum or sums of money, goods, chattels, stocks in the public funds, securities for money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands, tenements, or hereditaments, shall be given, granted, aliened, limited, released, transferred, assigned, or appointed, or any ways conveyed or settled upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, or anywise charged or incumbered by any person or persons whatsoever, in trust or for the benefit of any charitable uses whatsoever," unless, in the case of all property except stock in the public funds, by deed executed twelve months before the death of the donor or grantor and enrolled in Chancery; and in the case of stock in the public funds, unless such stock be transferred six calendar months before the death of such donor and grantor. This statute has been construed with great strictness; and many kinds of property, which for all other purposes are personal property, have been held to be real estate for the purposes of the Act, and accordingly not capable of being disposed of by will for charitable purposes. Thus, money due on mortgage, *Pickering* v. *Stamford*, 2 Ves. jun. 272; a right to lay mooring chains in the Thames, *Negus* v. *Coulter*, Amb. 367;

money secured upon turnpike tolls, *Knapp* v. *Williams*, 4 Ves. 430; and money secured by the bonds of the commissioners of a turnpike road, *House* v. *Chapman*, 4 Ves. 542; and, in a recent case, *Thornton* v. *Kempson*, 1 Kay, 592, money lent on the security of rates for paving, &c., have been held to be, by virtue of the Mortmain Act, incapable of being bequeathed for charity. And in the case of *Tomlinson* v. *Tomlinson*, 9 Beav. 459, Sir *John Leach*, M. R., held that canal shares, although made personal estate by the Act incorporating the company, were within the Mortmain Act, and could not be bequeathed for charitable purposes. It has however been for some time settled, that the case of *Tomlinson* v. *Tomlinson* is not to be followed, and that shares in incorporated joint stock companies are not within the operation of the Act: *Bligh* v. *Brent*, 2 Y. & C. 268; *Sparling* v. *Parker*, 9 Beav. 450. In *Robinson* v. *The Governors of the London Hospital*, 10 Hare, 19, stock in the London Assurance Company and Bank Stock were held by Sir *G. J. Turner*, V. C., to be personalty, and as such capable of being bequeathed for charitable purposes. As to shares in partnership property or in an unincorporated company, it will probably be held that such shares, so far as they comprise real property or property savouring of realty, are within the provisions of the Mortmain Act, and cannot be bequeathed by will for charitable purposes.

In *Baxter* v. *Brown*, 7 Man. & Gr. 193, a fulling-mill was held by trustees for the copartners under

a partnership deed, and the Court of Common Pleas held, on the construction of the deed of partnership, that there was a trust of the real estate for each partner, and that each partner was entitled to vote for members of parliament in respect of his equitable share of the freehold: *Tindal*, L. C. J., in his judgment, commenting on the distinction between the case of real property vested in a corporation aggregate, the individual corporators having as individuals no more interest in the freehold than perfect strangers, and no interest in the surplus profits of the concern until they actually arise, and the case where there is no other than a voluntary declaration by the parties themselves that the real estate should be considered as personal. In *Boyce* v. *Green*, Batty, 608, it was held that shares in the Mining Company of Ireland, which was an unincorporated company, were an interest in lands within the meaning of the Irish Statute of Frauds, which is the same as the English Statute; and it appears to follow, that, if partnership property be affected with the character of realty for the purpose of conferring votes for members of parliament and for the purpose of the Statute of Frauds, it must be considered as realty for the purpose of the Mortmain Act, and be incapable of being disposed of by will for charitable purposes.

The authority of the two last-quoted cases, so far as regards the inference that property, such as formed the subject of those cases, would be held to be incapable of being bequeathed for charitable purposes, may be considered as shaken by the case of *Myers* v. *Perigal*,

2 De G. M. & G. 599. In that case, Lord *St. Leonards*, C., decided, reversing the decision of Sir *L. Shadwell*, V. C., that a bequest of shares in a joint-stock bank, the assets of which were by its deed to be deemed personal estate, and which consisted of real estate, was not within the Statute of Mortmain. In his judgment, Lord *St. Leonards* said, "The question is, whether the Legislature did or did not intend to strike at interests of this nature. If we look at the intention of the purchaser of these shares, it is obvious, that he no more intended to buy an interest in any real estate which might form part of the partnership property, than to buy a portion of the real estate for his own use. By the very construction of the partnership deed such real estate would have gone to his personal representatives, and his real representatives could not have taken any portion of the estate by descent." "The true way to test it would be, to assume that there is real estate of the company vested in the proper persons under the provisions of the partnership-deed; could any of the partners enter upon the land, or claim any portion of the real estate for his private purposes? I apprehend they clearly could not: their whole interest in the property of the company is with reference to the shares bought, which represent their proportions of the profits. In short, a member has no higher interest in the real estate of the company than that of an ordinary partner seeking his share of the profits, out of whatever property these profits might be found to have resulted." From the reasoning of Lord *St. Leonards* in this case,

it appears probable, that his Lordship would have held, if the case had come before him, that a share in partnership property held by or in trust for a firm or unincorporated company for partnership purposes, although consisting of real estate, was not within the restrictions imposed by the Mortmain Act, but might be bequeathed for charitable purposes. It should be added, that in the case of *Myers* v. *Perigal*, the Court of Common Pleas certified in favour of the legality of the bequest for charitable purposes of the shares in a joint-stock bank. In *Watson* v. *Spratley*, 24 L. J., Exch., 53, it was held, that a contract for the sale of shares in a mining company, managed on the cost-book principle, is not a contract for the sale of land or an interest in land under the Statute of Frauds; and it may be considered that such shares, if not real estate within the meaning of the Statute of Frauds, would not be held to be real estate within the meaning of the Mortmain Act. The provision in the Mortmain Act rendering void a bequest of money to be laid out in the purchase of lands to be devoted to charitable purposes has been construed with considerable strictness; and it has been held, that a gift of money to be laid out in the erection of buildings, presupposes that part of the gift is to be expended in the purchase of land for that purpose, and that the whole gift is consequently void. In *Trye* v. *The Corporation of Gloucester*, 14 Beav. 173, Sir *John Romilly*, M. R., held, that a bequest of a sum of money for a charity, with a special proviso that no part of the money should be laid out

in the purchase of land, and with a gift over if a site for the purposes of the charity was not procured within a certain time from the testator's death, was a void bequest. His Honour, after noticing the various decisions on the subject, stated his opinion to be "that the rule deducible from these authorities, or, in other words, that the true construction of the statute 9 Geo. 2, c. 36, is, that a bequest is void which tended directly to bring fresh lands into mortmain; and also, that a bequest of money, to be expended in the erection or repair of buildings, is void unless the testator expressly states in his will his intention that the money so bequeathed is to be expended on some land then already in mortmain." In *Cawood* v. *Thompson*, 1 Sm. & G. 409, Sir *John Stuart*, V. C., held that a bequest of money to be applied for the maintenance and carrying on of a school at W., with an express direction that the said sum should not, nor should any part thereof, be applied in the purchase of lands, or in the purchase or erection of buildings the testator's expectation being that other persons would, at their expense, purchase the necessary land and building for the above-named purposes, was not contrary to the Statute of Mortmain. The Mortmain Act, sect. 4, excludes from its provisions dispositions in favour of the two universities or any colleges therein, or in favour of the colleges of Eton, Winchester, or Westminster; and by several subsequent Acts, various other charitable institutions are either partially or wholly exempted from the provisions of the Statute of Mortmain. When such ex-

emption is partial, care must be taken that any devise or bequest in favour of such excepted object is one fully authorised by the statute of exemption, as otherwise the whole gift will fall under the operation of the Mortmain Act, and will be treated as if no such exemption had existed. By the Act 43 Geo. 3, c. 108, persons were authorised by will, executed three months before death, to give lands not exceeding five acres, or goods and chattels not exceeding in value £500, for the purpose of building or repairing any church or chapel, notwithstanding the Statute of Mortmain. It was held by Lord *Cranworth*, C., confirming the judgment of Sir *W. P. Wood*, V. C., that a devise of two houses in Brighton, comprising less than five acres but exceeding £500 in value, to trustees, upon trust to sell and invest the proceeds, and pay the dividends thereof to the testator's widow for her life, and after her death to transfer the principal to the Incorporated Church Building Society, was void under the Mortmain Act, the meaning of the Legislature being, that land not exceeding five specific acres might be dedicated to one or other of the purposes mentioned in the Act; and that the society was not even entitled to the value of the houses to the extent of £500 : *The Incorporated Church Building Society* v. *Coles*, 5 De G. M. & G. 324.

In the case of *The Mayor of Feversham* v. *Ryan*, 5 De G. M. & G. 350, it was decided by the Lords Justices, confirming the decision of the Master of the Rolls, that a bequest to a municipal corporation, to be applied for such purposes as they should think to be

most for the benefit and ornament of their town, is not void under the Mortmain Act—the gift being of such a nature that it did not necessarily require the purchase of land; it was the duty of the corporation, as trustees, to apply the fund in the mode which the Act allowed, and not in that which it prohibited.

The judgment of the Master of the Rolls in the case of *Trye* v. *The Corporation of Gloucester* was maintained by that judge in the case of *Philpot* v. *St. George's Hospital*, 25 L. J., N. S., 33. In that case, the testator by his will, after reciting that he had contemplated the erection and endowment of certain almshouses, proceeded, "Now, in case I should happen to die without effecting such object, and any persons or person should, within twelve months after my decease, at their, his, or her expense, purchase or give a suitable piece of land in N. as the site of such almshouses, and with the intent that the same should be devoted to such purpose, then I empower and direct the trustees or trustee for the time being of this my will, when and so soon as such land shall have been legally dedicated to charitable uses, provided they, he, or she shall approve the scheme of the said intended charity, and the rules and regulations for the government thereof, to pay to the trustees of such intended charity, out of my personal estate, the sum of £60,000, —but so, nevertheless, that the said sum or any part thereof shall not be applied in or towards the purchase of any lands for the purposes of such charity. And if, and in case no such piece or parcel of land

shall be found and provided as aforesaid, or being such, the scheme of the intended charity or the rules and regulations for the government thereof shall not, in the opinion of the majority of my said trustees, be in accordance with what they may consider my wishes on the subject to have been, then I give and bequeath the sum of £60,000 to the trustees for the time being of *St. George's Hospital*. The land required was given, and the rules of the proposed charity appear to have been approved of as required by the will of the testator. Sir *J. Romilly*, M. R., held, that the case was not distinguishable from *Trye* v. *The Corporation of Gloucester*, and that the bequest for the purposes of erecting almshouses must fail, as it was impossible to carry the testator's wish into effect; and also, that the bequest in favour of St. George's Hospital did not take effect. The Master of the Rolls said, "The land having been given, and the rules approved, the law interposes and prevents the rules from being applied. It interposes, not by saying that the conveyance of the land is not legal, neither does it say that the rules of the charity are improper. No such difficulty arises, but the law says, that the legacy does not exist for this purpose, that it shall not take effect. This certainly was not contemplated by the testator. He did not suppose that any difficulty could arise, if the land were legally dedicated to the charity, and the rules were approved; and the gift over is intended to take effect only in case of a failure of one of these conditions, and not in the event of the bequest being contrary to law. The event, therefore,

on which the gift over to St. George's Hospital was to take effect has not arisen, and, consequently, both the original gift and the gift over fail."

The case of *Ware* v. *Cumberlege*, 24 L. J., N. S., 630, appears, in some respects, opposed to the tendency of the more recent cases upon the Statute of Mortmain. In that case, Sir *John Romilly*, M. R., held, that the shares of waterwork companies and of other companies holding land, where there was no clause in the Act of Parliament providing that the shares should be personal estate, were obnoxious to the provisions of the Statute of Mortmain. The decision in this case has been since disapproved of by Lord *Cranworth*, C., in the case of *Edwards* v. *Hall*, 25 L. J., N. S., 82, and 6 DeG. M. & G. 74, in which case the Lord Chancellor, after deciding (affirming the decision of Sir *W. P. Wood*, V. C.,) that a bequest for the "endowment" of district churches and chapels was not a gift voided by the Statute of Mortmain, held that shares in canal companies, in the Grand Junction Waterworks Company, (the shares of which were not by the Act of incorporation declared to be personalty), and arrears of rent, were pure personalty. His Lordship considered that the question as to the shares was settled by the case of *Myers* v. *Perigal*, observing, "The decision in *Myers* v. *Perigal* establishes that such shares are not an interest in land; and if not an interest in land there is certainly nothing to give them the character of real estate. They are not lands, they are not hereditaments, and so the statute does not apply."

Any secret trust for the disposal, in a manner inconsistent with the Statute of Mortmain, of property given by will will render the devise or bequest of such property void, in the same manner as if such illegal trust had been declared by the will; yet if the testator absolutely, and without any concert with the devisees or legatees, gives property to certain persons absolutely, a declaration of his desire as to the mode in which he hoped that they would employ the property so given to them would probably, if made in such a manner as to negative all idea of the existence of a trust, not be held to be a secret trust within the meaning of the Statute of Mortmain. Too much caution cannot, however, be used in such a case; and it is difficult even to form an opinion as to the circumstances which the Court may consider sufficient evidence of the existence of a trust. It is needless to say, that no expression of desire as to the employment for charitable purposes, forbidden by the Statute of Mortmain, of the testator's bounty should be contained in the testator's will or any codicil thereto, or be in any manner referred to by such will or codicil. The best plan, in cases where such a course is practicable, will probably be to leave the property in question to some person filling some official situation in connection with the purpose for which the testator wishes the property left to be applied, without any trust in any manner expressed, but describing the person by his official character, so as to affix an honourable trust upon such person.

In a recent case, a testator by will gave certain

freehold property at Chelsea and a sum of 12,000*l.* to A. B. and C. D., as joint tenants. By an unsigned letter addressed to his solicitor, who was acquainted with the charitable intentions of the testator, after mentioning that the solicitor was acquainted with what the testestor's wishes had been with respect to the Chelsea freeholds and the 12,000*l.*; and expressing his confidence, from the Christian characters of A. B. and C. D., that, if they were not able to do what the testator would have done, they would make use of what he had given them in such way as seemed to them best fitted to promote the glory of God and the welfare of our fellow-sinners. The testator stated his intention to have been, to have built and endowed a chapel and certain almshouses. It was held by Sir *W. P. Wood*, V. C., that there was no secret trust within the meaning of the Statute of Mortmain. In his judgment, the Vice-Chancellor, speaking of possible evasions of the Statute of Mortmain by trusting to the honour of a legatee or devisee, said: "No doubt there may be many cases where that end may be so attained; but that only comes to this, that, if the Statutes of Mortmain do not realise the objects for which they were enacted, there should be a new statute to meet the difficulty. I am anxious to uphold the Statutes of Mortmain, but I cannot, as against persons on whom I can fasten no secret trust, uphold these statutes at the expense of the Statute of Frauds. I should do that if I were to allow the plaintiffs here to establish this secret trust by setting up a parol obligation. I should,

in reality, be annihilating the Statute of Frauds and introducing a most dangerous and mischievous proceeding."

Though, as we have already seen, a letter from the testator expressing his expectation that the legatees under his will would apply their legacies for certain charitable purposes, is not sufficient to create a secret trust within the meaning of the Statute of Mortmain; yet if the legatee be informed of such confidence of the testator, it will be held that a trust is established in the share of such legatee. In *Tee* v. *Ferris*, 25 L. J., N. S., 437, a testator bequeathed the residue of the proceeds of his real estate to four persons equally. By a letter bearing even date with his will and addressed to the said residuary legatees, the testator declared that he had adopted the course of leaving his residuary estate to them, "that if he should from any circumstances die without making a disposition of such residue, that they would appropriate it to charity objects in their sound discretion." Three of the four residuary legatees were not informed of this letter during the testator's lifetime. The fourth legatee, on the day of the testator's death, heard the letter read by a solicitor who was taking instructions from the testator for a codicil to his will. Sir *W. P. Wood*, V. C., held that the one-fourth part of the real and personal estates devised and bequeathed by the will of the testator to the defendant R. F. (the legatee who had heard the letter read), was affected by the trusts declared by the letter so far as such trusts were valid, that such trusts were invalid so

far as regarded the real estate and personalty affected with land, and that the remaining three-fourths belonged to the other legatees as tenants in common.

A bequest of a sum of money to be laid out in the erection of a monument to the testator is not contrary to the Statutes of Mortmain: *Trimmer* v. *Danby*, 25 L. J., N. S., 424; but a gift to maintain the tomb in repair will, if extending beyond the period allowed by law for the non-vesting of property, be held void as a perpetuity: *see Lloyd* v. *Lloyd*, 2 Sim. N. S. 265.

Devises and bequests in favour of illegitimate children appear to require a short notice. The children should always be described by the names they have acquired by reputation or by reference to the mother. It being always to be borne in mind, that, if the devise or bequest be so expressed as by possibility to comprise legitimate children, such legitimate children will be held to be intended, to the exclusion of illegitimate children. The decision of Sir *John Stuart*, V. C., in *Re Overhill's Trusts*, 22 L. J., N. S., 485, before referred to, is a strong instance of the resolution of the Court of Chancery to construe a gift to children as a gift to legitimate children. It must be remarked, that devises in favour of the after-born illegitimate children of a certain man, whether generally or by a particular woman, are void, partly on the ground of public morality, and more especially from the impossibility of identifying such children. It appears to be at least very doubtful whether or no a gift in favour of the after-born illegitimate children of a certain woman, no reference

being made to the father of the children, would now be maintained. There would, of course, be no difficulty in identifying such children; but the objection to such a gift on the ground of morality would probably prevail, and would prevent any such gift from taking effect. Of course, a gift to the unborn illegitimate children of a certain woman by a certain man, would unquestionably be void for both the reasons above stated. A child in ventre sa mere being considered as born, it follows that a gift in favour of the child with which a certain unmarried woman is enceinte, is clearly good: *Gordon* v. *Gordon*, 1 Mer. 141; but in such case the child should be described simply as the child of which such a woman is enceinte, and no reference should be made to the reputed father. It has been held by Sir *W. Grant*, M. R., in *Earle* v. *Wilson*, 17 Ves. 538, that a gift to the child of which a certain woman was then enceinte by the testator was void; and though that judgment has been questioned by Lord *St. Leonards* and other eminent judges, yet it has never been distinctly decided that such a gift can be maintained. The child in ventre sa mere being sufficiently described by reference to the mother, it is difficult to see why the additional and unnecessary reference to the reputed father should be held to render the gift void.

A testator, having married his deceased wife's sister, made his will while such second wife was enceinte, and gave his real and personal estates to trustees, after the death of his wife, "in trust for all and every his

children thereafter to be born," the child of whom the testator's said second wife was enceinte was held not to be entitled. Sir *J. Romilly*, M. R., said, "a child in ventre sa mere certainly acquires a name by reputation; but this will does not contain such a description of the child about to be born as can entitle him to take under the gift, there are no words which point expressly to such child, there is nothing more than a description applying to a class of children; had this been a valid marriage, these words of gift to a class would include a child in ventre sa mere. The great objection to the claim of this child is, that he can take only as one of a class of children hereafter to be born; and the gift to that class is void, as the testator has not expressed his intention in such a way, that, having regard to the rules of law respecting illegitimate children, this child can take."

In many instances testators are desirous of postponing the period at which some person is to enter into the beneficial enjoyment of the property given by the wills, and of causing an accumulation of the rents and profits of such property until some person shall so become entitled in possession. In such cases the provisions of the Act 39 & 40 Geo. 3, c. 98, commonly called the Thelusson Act, must be borne in mind. By the 1st section of that Act it is enacted, "that no person or persons shall, after the passing of this Act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise soever, settle or dispose of any real or personal property so and in such manner that the

rents, issues, profits, or produce thereof shall be wholly or partially accumulated for any longer term than the life or lives of any such granter or granters, settler or settlers, or the term of twenty-one years from the death of any such granter, settler, devisor, or testator, or during the minority or respective minorities of any person or persons who shall be living or in ventre sa mere at the time of the death of such granter, devisor, or testator, or during the minority of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurances directing such accumulations would, for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest or annual produce so directed to be accumulated; and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed." The 2nd section of the Act provides, "that nothing in this Act contained shall extend to any provision for payment of debts of any granter, settler, devisor, or other person or persons, or to any provision for raising portions for any child or children of any granter, settler, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direc-

tion touching the produce of timber or wood upon any lands or tenements, but that all such provisions and directions shall and may be made and given as if this Act had not passed."

It has been long settled that a direction for accumulation for a longer period than is allowed by the Thelusson Act will only be void pro tanto, that is, for the period which in the event shall be found to exceed the limit of twenty-one years: *Griffiths* v. *Vere*, 9 Ves. 127; *Logden* v. *Simpson*, 2 Ves. 295.

In the case of *Barringon* v. *Liddell*, 2 De G. M. & G. 480, Lord *St. Leonards*, C., held that, under the 2nd section of the Thelusson Act, "A man may by his will provide for the debts of himself or any body else within the old limit. The Legislature meant that a man should, within the limit allowed by law, be able to provide, not only for his own debts but for the debts of such other persons as he should think fit, it being perfectly certain that the power was one which it would not be very dangerous to intrust to anybody. It is clear also that the provision as to debts must relate to past debts; and nobody can deny that a man, being able by his will under this Act to provide for his debts generally, this will include his future debts." Lord *St. Leonards* also held in the same case, that it was not necessary that the parent of the children for whose portions an accumulation was directed, should take by the same clause as that creating the portions. His Lordship also held, that it was not necessary that the interest which a person must take, whose children were

to be provided for under such conveyance, settlement, or devise, should be an interest in the very property directed to be accumulated, observing, "some definition was to be given of the parents of the children of strangers, and the Legislature not intending to permit the provision to be made for everybody, said, that if a testator upon the face of his will made a person the object of his bounty, he might by the same will accumulate a fund within the limit allowed by law for the children of that person." In the course of his judgment, Lord *St. Leonards* quoted, without disapprobation, remarks of Lord *Brougham* and Lord *Lyndhurst* to the effect that "any interest," however small, given to the parent of a child for whose portion an accumulation was directed, would be sufficient within the meaning of the Act. In *Edwards* v. *Tuck*, 3 De G. Mac. & G. 40, Lord *Cranworth*, C., in his judgment, in which he commented on the case of *Barrington* v. *Liddell*, observed, "I think that a direction to accumulate all a person's property, to be handed over to some child or children when they attain twenty-one, can never be said to be a direction for raising portions for the child or children; it is not raising a portion at all, it is giving everything. Portion ordinarily means merely a part or a share; and though I do not know that the gift of a whole might not in some circumstances come under the term of a gift of a portion, yet I do not think it comes within the meaning of a portion in this clause of the Act, which points to the raising of something out of something else for the benefit

of some children or class of children. And I do not think that the gift of a residue to accumulate is a provision for the raising of portions within the meaning of the 2nd section of the Act. In truth, if it were so, the whole Act would fall to the ground at once. It has indeed been often remarked that the Act is easily evaded; but if every direction for accumulation for a child was a portion, the intention of the Legislature, which was to prevent accumulations, such accumulations being most frequently directed for the benefit of children, would be entirely defeated. There is certainly the other safeguard which the clause imposes, namely, that the children in whose favour the accumulation may possibly be made are the children of some person taking an interest under the will; but applying to this the argument, that it is confined to the case of the children of a person taking an interest in the same property, it is clear that where residue is directed to accumulate, if the parents take an interest in anything, they take an interest in the same property in the only possible sense that could be attributed to the words, because, what is directed to be accumulated is all except the interest given to the parent. I think, therefore, that whether the proposition be right, that the parents must take an interest in the same property, or whether it be sufficient that they take an interest in any property, that question does not arise in a case where the accumulated fund is a residue, because of necessity if the parents take any interest, they take an interest in what must be considered the same property

as that which is the subject matter of accumulation. I cannot, therefore, come to any other conclusion than this, that a direction to accumulate residue for the benefit of an infant is not a provision for raising portions for the child within the meaning of the section in question."

It will be remarked, that Lord *Cranworth*, in *Evans* v. *Tuck*, appears to consider doubtful the authority of the decision in *Barrington* v. *Liddell*, that the interest given to the parents of a child for whose portion an accumulation is directed, need not be in the same property as that out of which the portion is to arise.

In case the testator propose to give a power of selecting the objects of his bounty to any person, the intention of the testator as to the disposal of the property over which such power is given, in default of the execution of such power of selection, should always be distinctly stated, so as to preclude any question as to an implied gift to the persons in whose favour such power of selection is given. "Implied gifts may be and often are created by powers of selection or distribution in favour of a defined class of objects; for where property is given to a person for life, and after his or her decease to such children, relations, or other defined objects as he or she shall appoint, or among them in such shares as the devisee shall appoint, and there is no express gift over to these objects in default of appointment, such a gift will be implied, the presumption being that the testator could not have intended the objects of the power to be disappointed of his bounty

by the neglect of the devisee to exercise such power in their favour:" 1 Jarm. on Wills, 2nd edit., 461. In the case of *Brown* v. *Higgs*, 4 Ves. 708, 5 Ves. 495, a testator gave certain leasehold estates to J. B., upon trust to pay certain sums of money; and after the above trust was performed, the testator empowered J. B. to take a part of the rent for his own use, and "to employ the remainder of the said rent to such children of S. B. as the said J. B. should think most deserving, and would make the best use of it, or to the children of W. A. B., if any such there were or should be." J. B. died in the testator's lifetime; and it was held by Lord *Alvanley*, M. R., that all the children were entitled, and "that at all events the testator meant it to go to the children: and these words of appointment he used only to give a power to J. B. to select some and exclude the others." The judgment of Lord *Alvanley* in this case was confirmed by Lord *Eldon*, 8 Ves. 561, and subsequently by the House of Lords. In affirming the judgment of Lord *Alvanley*, Lord *Eldon* observed, 8 Ves. 570, "It is perfectly clear, that, where there is a mere power of disposing, and that power is not executed, this Court cannot execute it. It is equally clear, that, whenever a trust is created, and the execution of that trust fails by the death of the trustee or by accident, this Court will execute the trust: but there is not only a mere trust and a mere power, but there is also known to this Court a power which the party to whom it is given is intrusted and required to execute; and with regard to that species of power

the Court considers it as partaking so much of the nature and qualities of a trust, that if the person who has that duty imposed upon him does not discharge it, the Court will, to a certain extent, discharge the duty in his room and place." In the case of *Burrough* v. *Philcox*, 5 My. & Cr. 72, a testator directed that certain stock should stand in his name, and certain real estates remain unalienated, "until the following contingencies are completed." And after giving life interests in such stock and estates to his two children, with remainder to their issue, he declares, that in case his two children, a son and a daughter, should both die without leaving lawful issue, the same should be disposed of as after mentioned, that is to say, the survivor of his two children should have power to dispose by will of his real and personal estate "amongst my nephews and nieces, or their children, either all to one of them, or to as many of them as my surviving child shall think proper." It was held by Lord *Cottenham*, upon the authority of *Brown* v. *Higgs*, that the nephews and nieces and their children were entitled to the property, subject to the selection and distribution of the survivor of the son and daughter; and that they all constituted the class to take all the property as to which no such selection and distribution had been made.

The whole question as to gifts by implication in a will, is discussed at full length in Jarman on Wills; and the various leading cases on the subject, some of which it is difficult to reconcile, are there cited and

commented on; it may be here repeated, that the question as to whether a gift be or not implied in a will, is one which ought never to arise.

When a power of distribution among a class is given by will, it has been held by many writers, relying on the case of *Pope* v. *Whitcombe*, 3 Mer. 689, that the persons forming the class in question at the death of the testator, are the persons to take under any appointment to be made. In Sugden on Powers, 6th ed. vol. 2, pp. 267—270, 650, Lord *St. Leonards* points out the inaccuracy of the report of the case of *Pope* v. *Whitcombe:* and in the case of *Finch* v. *Hollingsworth*, 21 Beav. 112, Sir *John Romilly*, M.R., grounded his judgment, in great measure, upon the fact of the case of *Pope* v. *Whitcombe* being inaccurately reported. In *Finch* v. *Hollingsworth*, a testator gave his residuary real and personal estate to his wife for life, and after her decease directed one moiety to be conveyed, &c. to his own relations, in such parts &c., as his wife by her will should appoint. The widow by her will appointed the said moiety among the relations of the testator living at her death. The next of kin of the testator at his death were two brothers, who both predeceased the widow. The Master of the Rolls held, that the appointment by the widow was good, observing, a decision in the contrary way might be productive of great inconvenience; in many cases it might be impossible for the donee to exercise the power, for all the relations living at the testator's death might be dead at the decease of the donee of the power, and

therefore there might be then no person in whose favour an appointment could be made. The same objection exists where there is a power to appoint to a class of individuals. On the whole, I am of opinion, that I must follow the real decision of the Court in the case of *Pope* v. *Whitcombe*, which I find to have been in favour of the person who was the relation of the original testator at the death of the donee of the power, and who would have taken in case the first testator had died at the same time as the donee of the power. I regret, that, from the error in the report, which has been adopted by text writers, many gentlemen have most probably advised their clients in a manner contrary to the decree of the Court, and the result has possibly been, that executors have distributed the assets on the faith of that erroneous authority." There can be no question as to the convenience of the rule laid down in *Finch* v. *Hollingsworth;* and the decision in that case being, as it appears, in accordance with prior cases, it is to be hoped that the law may be considered as settled upon this point; still it must be remembered, that the judgment in *Pope* v. *Whitcombe*, as erroneously reported, appears to have been approved of by Mr. Justice *Vaughan Williams* in his work on Executors, and also in Roper on Legacies.

It will be seen from the case of *Finch* v. *Hollingsworth*, that the Court will generally construe the word "relations" as next of kin.

Though the Court in construing a will, as has already been shewn, will, as far as can be done without mani-

festly doing violence to the intention of the testator, construe the devise or bequest strictly according to the meaning of the words of the will, it must always be borne in mind, that, when necessary to carry out the intention of the testator as gathered from the context of the will, the Court will change or transpose words or even whole sentences, and will even add words or sentences if thought absolutely necessary for carrying out such intention. A testator, after giving an annuity to his wife for life, and directing certain funds to be set apart for satisfying the same, continued: "And on her decease the sums provided and set apart for such payment to become the property of my son G. C., so far as he the said G. C., my son, shall receive the interest on such sum during his life, and on his demise the principal sum to become the property of any child or children he may have, and in such sums as my said son shall will and direct;" but in case of the son dying before his mother (the annuitant), then the testator gave the principal sum to other persons. The testator's son G. C. died in the lifetime of the testator and in the lifetime of the annuitant, leaving one son. Sir *John Romilly*, M. R., held that the words "without leaving a child," ought to be introduced after the word "dying," and that on the death of the annuitant the son of G. C. was entitled to the fund. The grounds upon which the Court will introduce words into a will appear very clearly from the judgment in this case: "It may be stated as a general rule, that, whenever the context requires it, words may be supplied, changed, and

transposed. To determine, however, where the context requires this change, insertion, or transposition of words is much more difficult; and there is no doubt this power is one that ought to be exercised very cautiously, lest a meaning be given to the will different from that which the testator intended. But when it is required to give one uniform and consistent meaning to the whole sentence, which, without it, would be irrational or repugnant, it may properly, and indeed must, be exercised. The two clauses of this sentence as they stand are inconsistent and repugnant to each other. The first branch gives an estate to the children, the second takes it away, and the introduction of the words "without leaving a child" after the word "dying," in the second branch of the sentence, would make the two branches of the sentence uniform and consistent:" *Abbott* v. *Middleton*, 25 L. J., N. S., 113, 21 Beav. 143.

In the case of a gift of an annuity by will, and of directions being given by the will, as is generally the case, for providing the annuity, it should be distinctly stated whether such annuity be intended to be permanent or be only to last for the life of the annuitant. The rule of law as to whether the annuitant take an annuity in perpetuity or an annnity for life only, is stated by Lord *St. Leonards*, C., in the case of *Kerr* v. *The Middlesex Hospital*, 2 De G. M. & G., 583: "It is perfectly settled, that, if an annuity be given simpliciter, that is, to one generally, a life interest only passes. It is equally, I believe, undisputed, that if an annuity be

directed to be provided out of the proceeds of property or out of property generally, if an annuity is to be brought into existence by the application of property, and that annuity is given to a party generally, he will take the property appropriated to purchase the annuity, and therefore the annuity in perpetuity if purchased." In the case of *Heron* v. *Stokes*, 12 Cl. & Fin. 161, it was held by the House of Lords, confirming a decree of Lord *St. Leonards* when Lord Chancellor of Ireland, that a bequest in these words, "My will is, that whatever I die possessed of or in any way entitled to, together with whatever property my wife may be in any way entitled to, shall produce to my wife an annuity of 100*l.* per annum," was a gift to the wife absolutely of so much property as produced 100*l.* a-year. In the case of *Kerr* v. *The Middlesex Hospital*, the testator by his will "directed that his executors should purchase annuities for each of his two sisters, of 100*l.* a-year each, the said annuities to be purchased in the British Funds." And after giving various annuities simpliciter, and various legacies, the testator "directed his landed property at O. to be sold by auction, and the produce to go to the carrying out of the aforesaid legacies and annuities." And it was held by Lord *St. Leonards*, C., and Sir *J. L. Knight Bruce*, L. J., reversing the decision of Sir *John Romilly*, M. R., (Lord *Cranworth*, L. J., dissenting), that the annuities to the testator's sisters were perpetual annuities, Lord Justice *Knight Bruce* expressing himself as bound by the decision of the House

of Lords in *Heron* v. *Stokes,* though not apparently approving of the decision in that case.

A single instance of the hardship and inconvenience which might result from provisions the insertion of which is often desired by the testator, will shew the necessity for consideration in settling the provisions of a will. It is not uncommon for testators, disposing of considerable property, to desire the insertion of a clause rendering it imperative on the person in possession under the will to reside for a certain time in every year in the family mansion under pain of forfeiture. This is generally done with a view of maintaining the family dignity; yet the effect is to prevent the holder of property coupled with this condition from serving in the army or navy, from entering the public service, or from undertaking any lengthened tour, none of which proceedings would in general be opposed to the views of the testator. In many cases, the evil might be still greater, as in the case of an estate charged with such a condition devolving upon a man engaged in active naval or military service. In the case put, a devisee, being imprisoned from any cause or being a detenue in time of war, would equally forfeit the estate. A tenant for life subject to a condition as to residence is also under great disadvantages in case he becomes embarrassed, and will find it very difficult to raise money upon the security of his life interest, except at a price far higher than would be required in the case of a tenant for life unfettered by such restriction. So

that the result of this attempt to support the family position is not unfrequently seriously to diminish the means upon which the tenant for life is expected to maintain the position which the testator desired the owner for the time being of his estate to occupy. It is probable that few testators, who desire the insertion of the clause, would persist in their intention if they were reminded of the various evils that may arise from it.

The power of sale of real estate ought to contain full powers enabling the parties executing the power to make all necessary stipulations as to title or evidence of title to the lands to be sold, in the absence of which powers trustees for sale will not be authorised in putting up trust property under stringent conditions of sale, although such conditions may be made used bonâ fide, and really to the benefit of the trust estate. A power for trustees for sale to give valid receipts for the purchase money of real estate should also never be omitted, as, in default of such power, the purchaser, necessarily having notice that the vendors were trustees, would be bound in equity to see that the purchase money was applied in the manner directed by the will, and would be personally liable for any loss or misapplication of the purchase money, a risk which would in itself be quite sufficient to deter any prudent person from such a purchase.

It has been long settled, that a purchaser from a trustee for sale, when the trust or one of the trusts of the purchase money is the payment of debts, is not li-

able to see to the application, or responsible for the misapplication or nonapplication, of the purchase more duly paid to the trustee for sale, the purchaser having no means of ascertaining the debts of the testator or whether any such debts remain to be paid; but this only applies in the case of a sale at such a distance of time after the testator's death as to fairly allow the purchaser reasonably to presume that the purchase money is or may be required for the payment of debts.

In *Stronghill* v. *Anstey*, 1 De G. M. & G. 635, Lord *St. Leonards*, C., after most strongly laying down the rule "that, if a trust be created for the payment of debt and legacies, the purchaser or mortgagee shall in no case be bound to see to the application of the money raised;" and, after noticing various cases as to the execution of trusts for sale or mortgage after a long interval, proceeded: "I will only add to the general question of distance of time, that people who deal with trustees raising money at a considerable distance of time and without an apparent reason for so doing, must be considered as under some obligation to inquire and to look fairly at what they are about. I do not thus mean to incumber or to lessen the security of purchasers or mortgagees under trusts; but if for a great number of years a trust remains unperformed, and parties are found in possession and receipt of the rents of the trust property, and then an application is made of it without their concurrence by the trustees, it may place those who deal with the trustees in a situation of having it established, that there was a breach of

trust of which they ought to have taken notice. So far, however, from wishing it to be supposed that anything which now falls from me is to lessen the security or safety of persons who are purchasers or mortgagees under ordinary circumstances, I am endeavouring to lay down a rule to make them more secure than perhaps they have hitherto been."

It may here be noticed, that a trust to sell and pay one or more debts and the other debts of the testator, will not make it necessary for the purchaser to see that these particular debts are paid.

"In the absence of any priority given by the testator to this debt over the others, the trust is equally for the benefit of all the creditors; and to hold that the purchaser must see that this one is paid, would be in effect to give a preference to one cestui que trust over the others, and to hold that the purchaser was bound to see tothe performance of one part only of one simple and indivisible trust:" *Robinson* v. *Lowater*, 17 Beav. 592.

Other important clauses relating to the management of estates devised, are the powers for granting leases, either for ordinary purposes, or for building or mining purposes, (and it should be borne in mind, that, in many parts of England, the usual substitute for a building lease is a conveyance of the fee simple, subject to a rent charge which represents the ordinary ground-rent); of course the latter powers will not be inserted unless the nature of the property be such as to appear to render their addition desirable, it being always to be remembered, that these powers, if omitted in the will,

can only be supplied by a private Act of Parliament, or under the provisions of the 19th & 20th Vict. c. 150, before alluded to; and also that it is as yet uncertain to what extent (if any) the Court of Chancery will, in authorising the exercise of the powers of the Act of 19 & 20 Vict. c. 150, act upon the rule, that the insertion of powers of sale and exchange, of leasing or other powers, in a will or settlement, is to be considered as a proof that the settlor or devisor did not desire the addition of further powers, and as a ground for refusing to sanction such additional powers. These powers are generally made exercisable with the consent of the tenant for life for the time being, if of full age, and if there be no such person, then at the discretion of the trustees.

In case of a devise or bequest to or in favour of children, it is usual to insert a power for the advancement of a part (generally a moiety) of the share of each son, for his preferment, (this power may, in the case of small properties, be advantageously extended to the case of daughters); and also a power authorising the application of the annual produce of the shares of children for their maintenance and education during minority. This power of maintenance and education may, with great advantage, be so framed as to authorise the trustees to pay such annual produce to the guardians of the infants, without the trustees being bound to see to the application of such produce. These powers are most important, as without them no part of the property of the minors could be applied for

their benefit without the intervention of the Court of Chancery; and as sons under age, and daughters under age and unmarried, in many cases take no vested interests under a devise or bequest in their favour, in such cases the insertion of these powers becomes a matter of the first necessity. The provision in the power of maintenance and education for the payment, if the trustees think fit, of the maintenance-money of any infant to his or her guardians, should never be omitted as an act of fairness to the trustees, in relieving them from a duty not fairly connected with the management of the testator's property, and as in every respect the most convenient method of carrying out the testator's intentions.

If, as is frequently the case, it is considered desirable that a solicitor should be a trustee, and should act professionally in the execution of the trusts, it should be clearly stated that he is to be paid his ordinary professional charges; otherwise, for any services rendered by such solicitor, or by the firm of which he is a partner, no payment will be allowed except costs out of pocket. In *Broughton* v. *Broughton*, 2 Sm. & Gif. 422, Sir *John Stuart*, V. C., decided, though with reluctance, that in a case where an executrix, who was also entitled to the residue of the money arising from the sale and conversion into money of the testator's estate, employed a solicitor, who was a co-trustee with such executrix of the testator's will, and the partners of such solicitor in the transaction of the necessary legal business of the trust, such solicitors were only entitled

to be repaid the money they had actually expended. In this case, the executrix had distinctly directed her co-trustee to perform the legal business that was required, and had also communicated with his partner as her solicitor; and it was not even alleged, than any expenses had been improperly incurred. The judgment of the Vice-Chancellor was confirmed on appeal by Lord *Cranworth*, C., 5 De G. M. & G. 169. His Lordship said, "The rule really is, that no one who has a duty to perform shall place himself in a situation to have his interests conflicting with that duty; and a case for the application of the rule is, that of a trustee himself doing acts which he might employ others to perform, and taking payment in some way for doing them. The good sense of the rule is obvious, because it is one of the duties of a trustee to take care that no improper charges are made by persons employed for the estate. The result, therefore, is, that no person in whom fiduciary duties are vested shall make a profit of them by employing himself, because in doing this he cannot perform one part of his trust, namely, that of seeing that no improper charges are made. It has been said, that the present is the case of a trustee-solicitor employed by the cestui que trust, who was also his co-trustee; I should have been glad to find any substantial distinction in this, but the fact is, that the real cestuis que trust are the creditors, and also, if the fund is solvent, the persons entitled." It appears from the case of *Broughton* v. *Broughton*, and from *Lincoln* v. *Windsor*, 9 Hare, 158, that the case of *Cradock* v.

Piper, 1 Mac. & G. 664, which in some degree relaxed the rule as to the nonpayment of solicitors who were trustees, will not be held to extend to any case beyond that actually determined by *Cradock* v. *Piper*. In that case, Lord *Cottenham* decided, that, if in the conduct of a suit there be several trustees, of whom one is a solicitor, and they all join in one defence, in the conduct of which that individual, who is a solicitor, also joins and acts, unless it can be shewn that the costs were increased by his being joined in the defence with his co-trustees, the full costs are to be allowed to the whole set of trustees, although one of them was a solicitor.

The numerous class of questions that arise as to fraud or undue influence, are not within the scope of these pages. It appears from the case of *Hindson* v. *Wetherell*, 5 De G. M. & G., 301, that, in the absence of fraud or undue influence, the rules of equity against dealings between clients and attornies, and between wards and guardians, will not be held to apply to testamentary dispositions. In that case, which was the case of a bequest by an ignorant man to his solicitor, who had prepared his will, Sir *J. L. Knight Bruce*, L. J., said, "How the matter would have stood if undue influence, or if misrepresentation, or any unfair dealing had been established against him, or if it had been shewn that he omitted to perform any duty incumbent on him as the testator's solicitor or agent, it is unnecessary for me to say, for in my opinion no such thing has been done. Mr. W. prepared his client's will, containing dispositions in his own favour. There begins

and ends the case as I view it. But a case so beginning and so ending does not take away the right, either legally or equitably, of a solicitor to be for his own benefit a devisee or legatee." "As to the authorities cited, they seem to me all consistent with a conclusion in Mr. W.'s favour—it being impossible that a testamentary gift by a client to a solicitor can, against the latter, be liable to all the same considerations as a gift to him inter vivos would have been, though it may be open to some of them."

It is hardly necessary to observe here, that, in the case of a devise or bequest in favour of a person who, from the position he holds towards the testator, may reasonably be suspected of exercising undue influence, unusual care is desirable, in order that the circumstances attending the preparation and execution of the will should afford no grounds for litigation or question. The employment of a solicitor selected by the testator and not by the legatee or devisee would, in many cases, prevent all danger of any question. In *Jones* v. *Goodrich*, 5 E. F. Moore, 20, Dr. *Lushington* said: "When a will is made in favour of a medical man in whose house the testator is resident, the Court must be upon its guard against undue influence, for practising which there is so much opportunity: and when a will under such circumstances is made by a solicitor who had no previous knowledge of the deceased, the Court must be sure that he distinctly understood her and acted as her agent, and not as the agent of the legatee who sent him. The law of England has prescribed no restric-

tions upon testamentary dispositions as to who may be the legatees. When that power is exercised in favour of guardians, trustees, solicitors, medical attendants, or persons standing in a similar relation to the deceased, the degree of proof required will be greater or less, according to the circumstances; but if the Court be satisfied that there was adequate capacity, testamentary disposition untainted by fraud, and a due execution, the instrument is valid. Fraud cannot be presumed; but the circumstances may render fraud so probable, that the Court will require stronger proof than in cases where all natural presumptions are in favour of the disposition and the free will of the testator."

It may here be mentioned, that a post-obit bond, or a covenant for payment of a sum of money after the death of the covenantor, or, in fact, any attempt to do in favour of any one what might have been done by an irrevocable will, if a will could be made irrevocable, will be looked at by the Court with the same strictness as in the case of a present gift inter vivos. In the case of *Cooke* v. *Lamotte*, 15 Beav. 234, a nephew, who had been provided for by the will of an aunt, obtained from her a post-obit bond. The bond was set aside, it not being proved that she knew fully what the effect of the bond would be. Sir *John Romilly*, M. R., in his judgment said: "The rule in cases of this description is this: where those relations exist by means of which a person is able to exercise a dominion over another, the Court will annul a transaction under which a person possessing that power takes a benefit,

unless he can shew that the transaction was a righteous one. It is very difficult to lay down with precision what is meant by the expression 'relation in which dominion may be exercised by one person over another.' That relation exists in the cases of parent, of guardian, of solicitor, of spiritual adviser, and of medical attendant, and may be said to apply to every case in which two persons are so situated that one may obtain considerable influence over the other. The rule of the Court, however, is not confined to such cases. Lord *Cottenham* considered, that it extended to every case in which a person obtains by donation a benefit from another to the prejudice of that other person and to his own advantage, and that it is essential in every such case, if the transaction should be afterwards questioned, that he should prove that the donor voluntarily and deliberately performed the act, knowing its nature and effect. It is not possible to draw the rule tighter or to make it more stringent, and I believe it extends to every such case."

In preparing a codicil to a will, it is always desirable to ascertain and to shew clearly on the face of the codicil what advances or payments, if any, have since the date of the will been made to any person provided for by the will, who is either a child of the testator or to whom the testator stands in loco parentis, so as to avoid any possible question as to the intention of the testator to provide a double portion for such child or other person to whom the testator stands in loco parentis. It should be remembered, that a gift by a

testator in his lifetime to a stranger who is a legatee under his will, will not, in general, be considered as a satisfaction of such legacy, but as an independent gift. In the case of a child or a person to whom the testator stands in loco parentis, the presumption is, that the testator did not intend to provide a double portion for such child or other person; and that, being under or having assumed the obligation to provide a portion for such child or other person, the gift by will and the payment in the testator's lifetime are to be considered as one transaction towards performing such obligation, and that the payment so made is accordingly to be considered as a satisfaction pro tanto of the legacy given by the will. The question as to whether the testator stood in loco parentis to the legatee, is one frequently of great difficulty. In *Powys* v. *Mansfield*, 3 My. & Cr. 366, Lord *Cottenham* said: "No doubt the authorities leave in some obscurity the question as to what is to be considered as meant by the expression, universally adopted, of one 'in loco parentis.' Lord *Eldon*, however, in *Ex parte Pye*, 18 Ves. 140, has given to it a definition which I readily adopt, not only because it proceeds from his high authority, but because it seems to me to embrace all that is necessary to work out and carry into effect the object and meaning of the rule. Lord *Eldon* says: 'It is a person meaning to put himself in loco parentis, in the situation of the person described as the lawful father of the child;' but this definition must, I conceive, be considered as applicable to those parental offices and duties to which

the subject in question has reference, namely, to the office and duty of the parent to make provision for the child. The offices and duties of a parent are infinitely various, some having no connection whatever with making a provision for a child; and it would be most illogical, from the mere exercise of any of such offices or duties by one not the father, to infer an intention in such person to assume also the duty of providing for the child. The relative situations of the father and the friend may make this unnecessary and the other benefits most essential." "Sir *William Grant's* definition is, 'A person assuming the parental character or performing the parental duties.'" "The rule both as to a father and to one in loco parentis, is founded upon the presumed intention. A father is supposed to intend to do what he is in duty bound to do, namely, to provide for his child according to his means. So one who has assumed that part of the office of a father is supposed to intend to do what he has assumed to himself the office of doing. If the assumption of the character be established, the same inference and presumption must follow. The having so acted towards a child as to raise a moral obligation to provide for it, affords a strong inference in favour of the fact of the assumption of the character; and the child having a father with whom it resides and by whom it is maintained, affords some inference against it, but neither are conclusive."

"A rich unmarried uncle taking under his protection the family of a brother who has not the means

of adequately providing for them, and furnishing through their father to the children the means of their maintenance and education, may surely be said to intend to put himself for the purpose in question in loco parentis to the children, although they never leave their father's roof. An uncle so taking such a family under his care will have all the feelings, intentions, and objects as to providing for the children, which would influence him if they were orphans. For the purpose in question, namely providing for them, the existence of the father can make no difference."

In the same case of *Powys* v. *Mansfield*, the judgment in which case was before the 1 Vict. c. 26, but which is generally applicable to wills made since that statute, Lord *Cottenham* says: "The codicil can only act upon the will as it existed at the time; and at the time the legacy revoked, adeemed, or satisfied, formed no part of it. Any other rule would make a codicil merely republishing a will operate as a new bequest, and so revoke any codicil by which a legacy given by the will had been revoked, and so undo every act by which it had been adeemed or satisfied. And as to the argument that the codicil must at any rate be evidence of an intention that both sums should be paid, the answer may be given that the testator, if he knew the rule of law, must have known that the codicil would not revive the adeemed legacy, and therefore it was unnecessary for him to mention it; the probability however is, that his attention being directed to the only object of the codicil, the words of confirmation of

the will were introduced as words of course without any reference to the legacy in question."

In *Pym* v. *Lockyear*, 5 My & Cr. 34, Lord *Cottenham* said, "All the decisions upon questions of double portions depend upon the declared or presumed intention of the testator. The presumption of equity is against double portions, because it is not thought probable, where the object appears to be to make a provision, and that has been effected by one instrument, that the repetition of it in a second should be intended as an addition to the first. The second provision therefore is presumed to be intended as a substitution for, and not as an addition to, that first given; but where the gift is a mere bounty, there is no ground for raising any presumption as to its amount, although such amount be comprised in two or more gifts."

A parent having power to appoint two sums of £5000 and £10,000 among his children, by his will, dated in 1842, appointed the £5000 to I., and the £10,000 between T. and C.; in 1844, the testator by deed appointed the £5000 to T.; in 1846, the testator by codicil confirmed his will, and died in 1847. It was held that the legacy appointed by will to T. was satisfied, and that £5000 being one half of the £10,000 remained unappointed: *Montague* v. *Montague*, 15 Beav. 565.

The will should also contain a power for the trustees to give receipts for any money payable to them or to be received by them under any of the trusts of the will, and also provisions for the appointment of new

trustees in the room of those named, and for the indemnity of the trustees against involuntary breaches of trust. The power for trustees to give receipts should be inserted in all cases, for the same reasons as render such power necessary in a trust for sale, or power of sale of real estates as before mentioned; and without the provisions for the appointment of new trustees and for the indemnity of trustees, a prudent person would hesitate to accept any trusteeship, the duties of which appeared likely to continue for any length of time, or to involve any serious dealings with property. The appointment of executors should also contain a full power to compromise and compound any claims either for or against the testator's estate, so as to preclude the necessity of litigation. In case the testator be engaged in trade or in anyway concerned in business with persons in trade, this provision is especially necessary, to prevent the very serious loss that may often be occasioned by executors being forced to drive a debtor to bankruptcy instead of accepting a composition.

Where property is intended to be settled upon any person for life, and afterwards upon the children of such person, it will most frequently be thought desirable to give the tenant for life a power of appointing which of such children shall take, and the shares in which they shall take, and to limit the property to the children in the event of no such appointment being made by the tenant for life. In such a case the hotchpot clause should always be inserted; the effect of this clause is to prevent any child from receiving a double

share, by taking both under an appointment in his or her favour, and under the limitation in the will in default of such appointment.

In case two or more sums of money are separately settled by the same will upon similar trusts or upon trusts which upon certain events become similar, attention is requisite in the preparation of the hotchpot clauses, in order that no question may arise as to the effect of such hotchpot clauses in the case of an appointment being made of one of the funds so settled.

Upon a marriage, two separate sums were provided by two separate deeds for the portions of younger children, and each of such deeds contained a hotchpot clause as to the shares of younger children "by virtue of these presents," and it was held that the two hotchpot clauses were separate and distinct: the result being, in the words of the Master of the Rolls, "I believe that a division will take place never contemplated by the testator when he executed the deeds of appointment or made his will:" *Montague* v. *Montague*, 15 Beav. 565. The same result as was produced by the separate settlement in the case of *Montague* v. *Montague*, may easily arise from a settlement of two funds by the same instrument, if the intention of the settlor be not so distinctly declared as to avoid all possible doubt.

When a testator desires to benefit a trader and his family, the interest given to the trader should be made to extend only until his bankruptcy or insolvency, or until he shall attempt to assign or incumber

his interest; and upon any of these events, the trustees should have ample powers to apply the principal or interest of the trust funds as may be thought best by the testator, for the benefit of the trader and his family or any of them, or to retain any part of such principal and interest at the discretion of the trustees.

If it be desired to provide for any person whom, from improvidence or other cause, it is not considered safe to entrust with the management of the testator's bounty, the trustees should be authorised to apply the same for the benefit of such person, or to retain the same at their discretion, as in the case of a gift in favour of a trader.

In the case of gifts to the two last-mentioned classes, it will be necessary to bear in mind the restrictions against accumulation before mentioned, and to provide for the application of the whole proceeds of the trust property at the expiration of twenty-one years from the death of the testator.

It has been a question whether a testator should devise estates vested in him as a trustee. A devise of estates vested in the testator as mortgagee should not be omitted, to avoid the expense of an application to the Court of Chancery under the "Trustee Act, 1850," and, if it be not necessary to have recourse to that Act, the possible expense attending the execution of a conveyance by the heir-at-law of the testator. It should here be noticed, that it has been held by Sir *W. P. Wood*, V. C., that the legal estate in real estate vested in the testator as mortgagor passed under a gift of "money,

securities for money," &c. The case of *Galliers* v. *Moss*, 9 B. & C. 207, was considered by the Vice-Chancellor as overruled by subsequent decisions.

The last class of wills upon which it is here considered necessary to touch, are wills framing family settlements of real estate. As in these cases the general object of the testator is to retain the property devised for the longest possible period in his family, and, as a means of so doing, to restrict the greatest possible number of takers under his will to life interests, care must be taken to omit no powers required for the due management of the estate during such tenancies for life; and it also becomes a matter for consideration, whether the respective tenants for life are to be permitted to charge the estate to any and what extent beyond their own life interests, and also what restrictions, if any, are to be imposed on such tenants for life. Full powers of leasing, including, if thought desirable, powers for granting building and mining leases, should be given to the several tenants for life when of age, and to trustees during the minority of any person entitled in possession by purchase under the will, and also powers for the enfranchisement of copyholds if the will contain a devise of a manor. The effect of the Act 19 & 20 Vict. c. 150, before referred to, should be considered in inserting these powers. A power for the trustees to manage the estates during the minority of any person entitled in possession by purchase under the will, and to apply the rents or any part thereof for the benefit of such person, should also be inserted.

A power to fell timber in due course will also be frequently found useful.

A very common provision in wills of this nature, is one requiring all persons taking under the devise therein to assume the name and arms of the testator. There is seldom any objection to the insertion of this clause, though a slight difficulty has arisen when it has been found, as is not unfrequently the case, that the testator had himself no right to the arms in question, in which case a grant of the arms so erroneously borne by the testator will not be made to the devisee; in this case, it has been considered that the obtaining by the devisee of a grant of arms as nearly as possible resembling the arms in question, was a sufficient compliance with the demands of the will.

In wills of this nature it is usual, unless there be other property to which the several tenants for life are entitled, to insert powers authorising each successive tenant for life, who or whose issue shall become entitled in possession under the will, to charge the estate with portions for younger children, and to limit terms of years to secure such portions. It is also usual to empower male tenants for life, who or whose issue shall become entitled, to charge the estate with jointures in favour of their respective wives; and female tenants for life to appoint the whole or a part of the rents to their respective husbands for their lives.

The powers of charging portions and of jointuring should never be omitted, unless the tenant for life possess other property enabling him to provide for his wife and younger children.

Among the precedents in this work is one of a will disposing of land likely to be required for building purposes, and authorising various special dealings with the property upon that event. It will at once be seen, upon reference to the precedent in question, that none of the powers or provisions before mentioned would be effectual for the due management and disposal of a property so situated. In most cases the ordinary power of granting building leases for a term of ninety-nine years will be sufficient; but in the case of a devise of building land in a town, the more elaborate powers of dealing with the property will be found useful.

In the case of the will of a person engaged in trade, it will often be desirable to appoint executors as to the trade effects only of the testator; in such a case the will should contain the most ample powers as to winding up or continuing to carry on the business of the testator. And whether special trustees or executors be appointed or no, in respect of the trade effects of such testator, the will should distinctly shew the full nature and extent of the powers intended to be thereby given in respect of such business and effects, and especially as to the employment in carrying on the business of the capital already engaged therein, or of any other part of the testator's property. If these provisions be omitted or prove insufficient, or fail to point out with sufficient clearness the intentions of the testator, the executors will generally be compelled, from a regard to their own safety, to place the winding up of the testator's affairs under the direction of the Court of Chancery.

A testator, much of whose property is invested in securities liable to great depretiation in value, will also find it prudent to give special powers to the trustees of his will to defer the sale and conversion of such property, either for a certain period, or till particular securities or shares attain a certain value; it will perhaps be better for the testator to name a time within which no sale or conversion shall be compulsory, than to attempt to specify the value for which such sale or conversion may take place. Since so large an amount has been invested in railways, the necessity for the insertion of the last-mentioned power has greatly increased.

In either of the two last-mentioned cases, the testator will of course exercise especial care in the selection of the trustees to whom such important powers are intrusted; but, in every case, it is a matter of more importance than is often supposed, that the trustees and executors of a will should be judiciously chosen. Application should, in all cases, be made to them at the time of executing the will, to ascertain that they are willing to accept the trusts reposed in them. And in the event of the death of a trustee or executor in the lifetime of the testator, or of a trustee or executor after his appointment expressing an unwillingness to act, a new trustee or executor should be at once substituted, —either by the execution in due form of a new will containing throughout the names of new trustees instead of those dying or declining to act, or by a codicil noticing the death of any trustee or executor who may have died, or revoking the appointment of any who are unwilling to act, and all devises and bequests

to them as such trustees, and substituting new ones in their places.

In case of any legacy being bequeathed to any trustee or executor, it should be expressly stated whether the gift is contingent upon his accepting the trusts reposed in him. If this be omitted, disputes will probably arise as to the right of a trustee or executor declining to act to a legacy, which, it will be contended, was intended as a recompense for the trouble presumed to be imposed upon him by the will. Mention has already been made of the necessity of providing for the due payment of a solicitor who may be appointed a trustee or executor.

If the testator propose by his will to execute a *general* power of appointment in favour of a child, the case of *Eccles* v. *Cheyne*, 2 K. & J. 676, should be borne in mind. In that case Sir *W. P. Wood*, V.C., decided, in an elaborate judgment, that the personal representatives of a daughter, to whom, in pursuance of a general power of appointment, the proceeds of the sale of real estate had been appointed by will, and who died in the testator's lifetime, leaving issue living at the testator's death, were entitled to such proceeds.

These few observations will, it is hoped, comprise most of the objects to which the attention of the draftsman is commonly required to be directed in the preparation of wills. The execution and revocation of wills will more properly come under consideration in the following pages, in which it is proposed to consider the Act of 7 Will. 4 & 1 Vict. c. 26, which has effected such important changes in the law of this subject.

STATUTE OF WILLS.

7 WILL. IV. & 1 VICT. CAP. 26.

An Act for the Amendment of the Laws with respect to Wills. [3rd July, 1837.]

Meaning of certain words in this Act.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled An Act for taking away the court of wards and liveries, and tenures in capite and by knights service, and purveyance, and for settling a revenue upon his Majesty in lieu thereof, or by virtue of an Act passed in the parliament of Ireland in the fourteenth and fifteenth years of the

"Will."

12 Car. 2, c. 24.

14 & 15 Car. 2, (I.)

reign of King Charles the Second, intituled An Act for taking away the court of wards and liveries, and tenures in capite and by knights service, and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

"Real estate:" "Personal estate:" Number: Gender:

II. And be it further enacted, That an Act passed in the thirty-second year of the reign of King Henry the Eighth, intituled The Act of wills, wards, and primer seisins, whereby a man may devise two parts of his land; and also An Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled The Bill concerning the explanation of wills; and also an Act passed in the parliament of Ireland, in the tenth year of the reign of King Charles the First, intituled An Act how lands, tenements, &c., may be disposed by will or otherwise, and concerning wards and primer

Repeal of the statutes of Wills, 32 Hen. 8, c. 1, and 34 & 35 Hen. 8, c. 5.

10 Car. 1, sess. 2, c. 2, (I.)

seisins; and also so much of an Act passed in the twenty-ninth year of the reign of King Charles the Second, intituled An Act for prevention of frauds and perjuries, and of an Act passed in the parliament of Ireland in the seventh year of the reign of King William the Third, intituled An Act for prevention of frauds and perjuries, as relates to devises or bequests of lands or tenements, or to the revocation or alteration of any devise in writing of any lands, tenements, or hereditaments, or any clause thereof, or to the devise of any estate pur autre vie, or to any such estate being assets, or to nuncupative wills, or to the repeal, altering, or changing of any will in writing concerning any goods or chattels or personal estate, or any clause, devise, or bequest therein; and also so much of an Act passed in the fourth and fifth years of the reign of Queen Anne, intituled An Act for the amendment of the law and the better advancement of justice, and of an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, intituled An Act for the amendment of the law and the better advancement of justice, as relates to witnesses to nuncupative wills; and also so much of an Act passed in the fourteenth year of the reign of King George the Second, intituled An Act to amend the law concerning common recoveries, and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled An Act for prevention of frauds and perjuries, as relates to estates pur autre vie; and also an Act passed in the twenty-fifth year of the reign of King George the Second, intituled An Act for avoiding and putting an end to certain doubts and questions relating to the attestation of wills and codicils concerning real estates in that part of Great Britain called England, and in his Majesty's colonies

Sects. 5, 6, 12, 19, 20, 21, & 22 of the Statute of Frauds, 29 Car. 2, c. 3; 7 Will. 3, c. 12, (I.)

Sect. 14 of 4 & 5 Anne, c. 16.

6 Anne, c. 10, (I.)

Sect. 9 of 14 Geo. 2, c. 20.

25 Geo. 2, c. 6, (except as to colonies).

and plantations in America, except so far as relates to his Majesty's colonies and plantations in America;

25 Geo. 2, c. 11, (I.)

and also an Act passed in the parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled An Act for the avoiding and putting an end to certain doubts and questions relating to the attestations of wills and codicils concerning real estates; and also an Act passed in the fifty-fifth year of the reign of King George the Third, intituled An Act to remove certain difficulties in the disposition of copyhold estates by will—shall be and the same are hereby repealed, except so far as the same Acts or any of them respectively relate to any wills or estates pur autre vie to which this Act does not extend.

55 Geo. 3, c. 192.

All property may be disposed of by will;

III. And be it further enacted, That it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir at law, or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise, to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will

comprising customary freeholds and copyholds without surrender and before admittance, and also such of them as cannot now be devised:

if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not been made; and also to estates pur autre vie, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Estates pur autre vie; contingent interests; rights of entry; and property acquired after execution of the will.

IV. Provided always, and be it further enacted, That where any real estate of the nature of customary freehold, or tenant right, or customary or copyhold, might, by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same to the use of his will, no person entitled or claiming to be entitled thereto by virtue of such will

As to the fees and fines payable by devisees of customary and copyhold estates.

shall be entitled to be admitted, except upon payment of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of the surrendering of such real estate to the use of the will, or in respect of presenting, registering, or enrolling such surrender, if the same real estate had been surrendered to the use of the will of such testator: Provided also, that where the testator was entitled to have been admitted to such real estate, and might if he had been admitted thereto have surrendered the same to the use of his will, and shall not have been admitted thereto, no person entitled or claiming to be entitled to such real estate in consequence of such will shall be entitled to be admitted to the same real estate by virtue thereof, except on payment of all such stamp duties, fees, fine, and sums of money as would have been lawfully due and payable in respect of the admittance of such testator to such real estate, and also of all such stamp duties, fees, and sums of money as would have been lawfully due and payable in respect of surrendering such real estate to the use of the will, or of presenting, registering, or enrolling such surrender, had the testator been duly admitted to such real estate, and afterwards surrendered the same to the use of his will; all which stamp duties, fees, fine, or sums of money due as aforesaid shall be paid in addition to the stamp duties, fees, fine, or sums of money due or payable on the admittance of such person so entitled or claiming to be entitled to the same real estate as aforesaid.

Wills, or extracts of wills of customary freeholds and copyholds to

V. And be it further enacted, That when any real estate of the nature of customary freehold or tenant right, or customary or copyhold, shall be disposed of by will, the lord of the manor or reputed manor, of

which such real estate is holden, or his steward, or the deputy of such steward, shall cause the will by which such disposition shall be made, or so much thereof as shall contain the disposition of such real estate, to be entered on the court rolls of such manor or reputed manor; and when any trusts are declared by the will of such real estate, it shall not be necessary to enter the declaration of such trusts, but it shall be sufficient to state in the entry on the court rolls that such real estate is subject to the trusts declared by such will; and when any such real estate could not have been disposed of by will if this Act had not been made, the same fine, heriot, dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall as against the devisee of such estate have the same remedy for recovering and enforcing such fine, heriot, dues, duties, and services as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

be entered on the court rolls;

and the lord to be entitled to the same fine, &c. when such estates are not now devisable as he would have been from the heir in case of descent.

VI. And be it further enacted, That if no disposition by will shall be made of any estate pur autre vie of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate pur autre vie, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to

Estates pur autre vie.

the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

No will of a person under age valid;

VII. And be it further enacted, That no will made by any person under the age of twenty-one years shall be valid.

nor of a feme covert, except such as might now be made.

VIII. Provided also, and be it further enacted, That no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time.

IX. And be it further enacted, That no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

X. And be it further enacted, That no appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be

executed with some additional or other form of execution or solemnity.

XI. Provided always, and be it further enacted, That any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

Soldiers and mariners' wills excepted.

XII. And be it further enacted, That this Act shall not prejudice or affect any of the provisions contained in an Act passed in the eleventh year of the reign of his Majesty King George the Fourth and the first year of the reign of his late Majesty King William the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy," respecting the wills of petty officers and seamen in the Royal Navy, and non-commissioned officers of marines, and marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in her Majesty's Navy.

Act not to affect certain provisions of 11 Geo. 4 & 1 Will. 4, c. 20, with respect to wills of petty officers and seamen, and marines.

XIII. And be it further enacted, That every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Publication not to be requisite.

XIV. And be it further enacted, That if any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Will not to be void on account of incompetency of attesting witness.

XV. And be it further enacted, That if any person shall attest the execution of any will to whom

Gifts to an attesting witness to be void.

or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Creditor attesting to be admitted a witness.

XVI. And be it further enacted, That in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Executor to be admitted a witness.

XVII. And be it further enacted, That no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Will to be revoked by marriage.

XVIII. And be it further enacted, That every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such

appointment pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions).

No will to be revoked by presumption.

XIX. And be it further enacted, That no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

XX. And be it further enacted, That no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

No alteration in a will shall have any effect unless executed as a will.

XXI. And be it further enacted, That no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

XXII. And be it further enacted, That no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shewn.

A devise not to be rendered inoperative by any subsequent conveyance or act.

XXIII. And be it further enacted, That no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A will shall be construed to speak from the death of the testator.

XXIV. And be it further enacted, That every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

A residuary devise shall include estates comprised in lapsed and void devises.

XXV. And be it further enacted, That, unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to

law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

XXVI. And be it further enacted, That a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

A general gift shall include estates over which the testator has a general power of appointment.

XXVII. And be it further enacted, That a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he

may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

A devise without any words of limitation shall be construed to pass the fee.

XXVIII. And be it further enacted, That where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death.

XXIX. And be it further enacted, That in any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise: Provided, that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

No devise to trustees or executors,

XXX. And be it further enacted, That where any real estate (other than or not being a presentation to

a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

except for a term or a presentation to a church, shall pass a chattel interest.

XXXI. And be it further enacted, That where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.

XXXII. And be it further enacted, That where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devises of estates tail shall not lapse.

XXXIII. And be it further enacted, That where any person being a child or other issue of the tes-

Gifts to children or other issue

who leave issue living at the testator's death shall not lapse.

tator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Act not to extend to wills made before 1838, nor to estates pur autre vie of persons who die before 1838.

XXXIV. And be it further enacted, That this Act shall not extend to any will made before the first day of January one thousand eight hundred and thirty-eight, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this Act shall not extend to any estate pur autre vie of any person who shall die before the first day of January one thousand eight hundred and thirty-eight.

Act not to extend to Scotland.

XXXV. And be it further enacted, That this Act shall not extend to Scotland.

Act may be altered this session.

XXXVI. And be it enacted, That this Act may be amended, altered, or repealed by any Act or Acts to be passed in this present session of Parliament.

OBSERVATIONS ON THE STATUTE

7 WILL. 4 & 1 VICT. CAP. 26.

THE great importance of the Act of 7 Will. 4 & 1 Vict. c. 26, and the numerous changes in the law relating to wills which it has effected, will, it is conceived, render necessary a few remarks on the principal objects of that measure.

Section 2.

SECT. 2. The partial or entire repeal by this section of no less than eleven different Acts of Parliament relating to wills has had a most beneficial effect in simplifying the law on that subject. By far the greater number of difficulties that arise with respect to wills executed or republished since this statute came into operation can now be resolved by reference to the Act itself and to the numerous decisions upon wills subject to its influence, a sufficient time having now elapsed for most of the questions to which the Act at first gave rise to come under the decision of the proper Courts.

Section 3.

SECT. 3. The effect of this section is perhaps

greater than that of any other in the Act. The power given by it to devise contingent executory and future interests and rights of entry greatly enlarges the power of the testator; but the most important part of this section (and the part the practical benefit of which is most universally felt) is the last clause, enacting that the power of devising and bequeathing given by the Act shall extend to such estates, interests, and rights, real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. This clause, in connection with the twenty-fourth section of this Act, renders unnecessary the execution of a fresh will on every purchase of real estate which is intended to pass by such will, and removes one of the most frequent causes for the failure of wills taking effect under the law existing before the passing of this Act. It must be borne in mind that the effect of this clause and of the twenty-fourth section is, that the will takes effect as if made immediately before the testator's death; so that a devise of all his estate in the parish of —— will not be confined to estates held by him at the date of his will, but will pass all the testator's estates in that parish held by him at his death, though they should form no part of those intended to be devised when the will was made. It will therefore be prudent, when the

intention of the testator is only to devise the property of which he is seised at the time of his will in a particular locality, to describe it specifically, and to avoid as much as possible describing it in any manner which would comprise after-acquired property in the same locality.

Sect. 7. The effect of this section is to remove a mischievous anomaly, by extending the incapacity of persons under twenty-one years of age to convey property inter vivos to testamentary dispositions. As testamentary dispositions, if impeached on the ground of the mental incapacity of the testator or by reason of undue influence exercised upon the testator have always been most carefully considered by the Courts, it appears strange that any dispositions by infants of property by will should have been lawful up to so late a period as that of the passing of this Act; and that, when infants were strictly debarred by law from exercising the least dominion over their property during their minorities, and even from contracting any debts except for actual necessaries, they should have possessed the power at a comparatively early age of disposing by will of any amount of personal property.

Section 7.

Sect. 8. A question at once arose upon the construction of this section, as to whether the effect of this section was such as to exclude

Section 8.

wills made by married women under powers from the provisions of the two next sections, specifying the manner in which wills must be executed, and requiring appointments by will to be executed in the same manner as wills are by the Act required to be executed. It may be doubted whether the effect of this section, explicit as the words are, would be sufficient to outweigh the direct provisions in section 10, as to the non-requirement of any particular mode of executing powers of appointment by will. The provision in this section is apparently at direct variance with section 10; and as a will made by a married woman under a power must, if it take effect, be such an appointment as is alluded to in section 10, it is probable that the latter section would prevail, and that a will by a married woman (the first section of the Act enacting that the word "will" should comprise an appointment by will or by writing in the nature of a will in exercise of a power) would be held to be effectual if executed and attested in manner required by this Act in the case of wills made by men or by femmes soles. Until this point has been definitely decided, the prudent practitioner will require every will or testamentary appointment made by a married woman to be executed so as to satisfy the requirements of this Act, as well as of the instrument by virtue of which the will or testamentary appointment in question is to take effect. The

ordinary practice is, to require such execution; and the doubt that has been thrown upon many titles by the judgment in the case of *West* v. *Ray*, referred to in the Introduction, will shew the wisdom of requiring in all cases such an execution of every instrument as will preclude all question, and also of continuing such requirement until a decision of the highest Court, or a long and universal course of practice has established the non-necessity of such mode of execution. The decision overruled by the case of *West* v. *Ray* had been implicitly followed and relied on for several years.

SECT. 9, does away with the difference that existed as to the number of witnesses required for the attestation of wills of real and personal estate respectively, by reducing the number of witnesses required for wills of every description to two. The manner in which the will must be executed and attested is very clearly defined by the Act, and great care should be taken that all its requisitions are strictly complied with.

Section 9.

The will must be signed "at the foot or end thereof" by the testator, or by some other person in his presence, and by his direction. The direction must be exactly followed; the will must be signed; a seal will not be held sufficient, though it seems that the testator's mark will be sufficient, even though the name of the testator should not

occur in the will; the signature must be "at the foot or end" of the will. It will not be now sufficient for the will to be in the testator's handwriting, and to be described at the commencement as his will. Probate will be refused of a will extending over two sides of a sheet of paper, if the signature be only on the first side, and of a will written on several sheets if the testator's signature be only signed to some of the first sheets, and not to the last sheets; the signature must be "by the testator, or by some other person in his presence, and by his direction." A testator cannot authorise any person under any circumstances to execute his will in his absence. It is not material if the person signing for the testator should use his own name.

The directions as to the witnesses to the testator's signature also require particular attention, as the smallest instance of disobedience to the provisions relating thereto will prove fatal to the will. The testator should actually sign his will in the presence of the witnesses, who should both be so placed as to see him write; it will be prudent for him at the same time to declare to them that the paper in question is his will. The witnesses should, immediately after the testator has signed, subscribe their own names as attesting the execution. This must be done in the presence of the testator and of each other; and great care should be taken that both the execution and

attestation of the will be really witnessed by the testator and all the witnesses respectively.

The Act dispenses with any form of attestation; but it is always prudent that the attestation should state the due execution of the will by the testator, and also the fact that the signatures of the witnesses are attached at the same time in the presence of the testator and of each other. If the will consist of several sheets of paper, it is usual for the testator to sign each sheet, and to sign and seal the last; the sealing is, except in the case of appointments, and as hereinafter mentioned, entirely unnecessary.

A very rigid rule of construction was applied by the Ecclesiastical Courts to the words of this section requiring the signature of the testator to be at the foot or end of the will, and probate was refused to wills the signature to which was at the beginning of a new page if there appeared to be room for such signature at the bottom of the preceding page, and also when the signature was considered to be at too great a distance from the conclusion of the will. Great evils arose from this strict manner of carrying out the Act of 1 Vict.; and by the Act of 15 & 16 Vict. c. 24, it was enacted, that "Every will shall, so far only as regards the position of the signature of the testator or of the person signing for him, be deemed to be within the said enactment (the Act 1 Vict. c. 26) as explained by this Act, if the sig-

nature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow, or be after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature. And the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under the said Act

(1 Vict. c. 26), or this Act, shall be operative to give any effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made."

Section 10.

SECT. 10. This section puts an end to all possibility of mistakes as to the due execution of wills executing powers of appointment. The importance of this is considerable, as wills are often necessarily prepared hastily and under circumstances which do not admit of ascertaining the method in which powers attempted to be executed by the will were, by the instrument creating such powers, required to be executed. The case of *West* v. *Ray*, mentioned in the Introduction, and the effect of that case in respect to the execution by will of powers required to be executed by "any writing sealed, &c.," should be kept in mind, if, as is frequently the case, the will is required to be prepared without inspection of the instruments conferring powers of appointment on the testator. In such cases it may be as well for the will to be sealed and delivered by the testator, so as to preclude any possible question as to the validity of the appointment by such will expressed to be made. In wills, however, executed by married women, the observations upon Sect. 8 should be borne in mind.

Section 11.

SECT. 11. It is to be remarked that soldiers in quarters or in garrison, even though considered by the War Office to be "in actual military service," are not considered so for the purposes of this proviso, but their wills must be executed and attested in the usual manner.

Section 12.

SECT. 12. The act of 11 Geo. 4 & 1 Will. 4, c. 20, the provisions of which are retained by this section, contains very elaborate provisions with respect to the wills of petty officers and seamen in the Royal Navy, and of non-commissioned officers of marines, so far as relates to monies payable in respect of services in the Royal Navy. The Act in question directs that the will shall not be valid, unless it contain the name of the ship to which the testator belongs at the time, or to which he last belonged; and also a full description of the degree of relationship or residence of the person or persons to whom, or in whose favour, as executor or executors, the same shall be made; and also the day of the month and year, and the name of the place when and where the same shall have been executed; and also gives elaborate directions as to the attestation of the will, for which reference should be made to the 48th section of the Act in question; and also a provision, that no such will shall be valid which shall be contained in the same instrument with a power of attorney.

Section 13.

SECT. 13 only enacted what had been already decided, that no publication or recognition of the testamentary act was necessary. In practice, however, it is usual for the testator to declare the instrument to be his will when executed by him, and for the witnesses to notice the fact in their attestation.

Sections 14, 15.

SECTS. 14 and 15 do little more than re-establish the law as it stood previous to the repealing clause in this Act. The necessity for some such provision against fraud and forgery is apparent; though there appears a serious incongruity in admitting a person as a credible witness for the purpose of proving part only of an instrument, when the facts of the case and the appearance of the will itself will generally be sufficient evidence that the whole will, or no part thereof, is either true or false. The only alteration which these sections make in the law is the extension of the law, which rendered void all devises and bequests in favour of attesting witnesses, to devises and bequests in favour of the husbands and wives of such witnesses. Care should of course be taken to prevent any legatees or devisees, or their husbands or wives, from acting as witnesses; and the testator should be warned of the consequence of their so acting if the will be sent to him for execution. It has been decided by Sir *R. T. Kindersley*, V. C., that

a legacy was not void by reason of the legatee having attested a codicil under which he took no benefit, and also that the gift of a reversionary interest in a residuary share given by a will was not revoked by the fact of the residuary legatee attesting a codicil which revoked a legacy given by the will, and thereby increased the amount of the residue: *Gurney* v. *Gurney*, 24 L. J., N. S., 656.

The case of *Gurney* v. *Gurney* has been followed by Sir *W. P. Wood*, V. C., in *Tempest* v. *Tempest*, 2 Kay & J. 635. In *Tempest* v. *Tempest* an annuitant under the will was witness to a codicil revoking certain legacies, and confirming the will: Sir *W. P. Wood* said, referring to *Gurney* v. *Gurney*, "I must follow that authority; I think it is reasonable. Each witness attests only the instrument to which he puts his name." Though the cases of *Gurney* v. *Gurney* and *Tempest* v. *Tempest*, decided as they have been by two Vice-Chancellors, may be considered as sufficient authority for payment by executors of a legacy given by a will to an attesting witness of a codicil; still, in the absence of any decision by the Lord Chancellor and the Court of Appeal, these cases should be considered sufficiently open to question, to render it undesirable for a person taking any benefit under a will to act as witness to the execution of a codicil to such will.

SECT. 16 empowers a creditor, or the husband or wife of a creditor, whose debt is charged by the will upon any property, to act as witness, notwithstanding such charge. It is difficult to comprehend the principle upon which this case is to be distinguished from that of a legatee or devisee.

Section 16.

SECT. 17 empowers an executor to be a witness to the will. When executors were entitled, for their own use, to the undisposed-of personal estate of their testator, the same objection existed against their admission as witnesses to prove the validity of the will as that which is still in force with regard to legatees, and which has been, in fact, compromised in the manner mentioned in the 15th section. Since the change in the law, by which executors are debarred from claiming in that character, for their own use, any part of the testator's effects, there is clearly no objection to their being accepted as witnesses to prove the due execution of his will. There is, too, no objection to a mere trustee, taking no beneficial interest, acting as witness to a will constituting him such trustee.

Section 17.

SECT. 18. This section makes a most important and most judicious change. Prior to this Act, the wills of women were revoked by their marriage, while the wills of men were only revoked by marriage and by the birth of a child. The wills of

Section 18.

both sexes are now placed on the same footing as those of women made before this Act: it must, however, be remembered, that wills made before the 1st of January, 1838, and not republished since that date, are not within the scope of this section; and, accordingly, such wills made by men are not revoked by marriage alone, without the birth of a child.

Section 19.

SECT. 19. The exception in case of marriage (see Sect. 18) must be borne in mind; and it should be remembered that this Act in no degree extends to prevent the ademption or satisfaction of legacies. (See also the remarks in the Introduction, as to the case of legacies by parents or persons standing in loco parentis, and the presumption against double portions.)

Section 20.

SECT. 20. In relation to this section, it must be borne in mind, not only that no unattested codicil or other unattested paper has any effect in revoking a will, but that the burning, tearing, or otherwise destroying the will must be either by the testator or in his presence; so that in the common case of a testator depositing his will in the hands of a third party, and, upon a change in his intention, desiring such third party, either verbally or by letter, to destroy such will, such destruction, if in the testator's absence, will not be a sufficient revocation. And if the will be so

destroyed in compliance with such request, it is conceived that secondary evidence of the contents of such will will be received.

Section 21.

SECT. 21. In the absence of evidence to the contrary, it will be inferred that any alterations on the face of a will were made after the execution; and such alterations would, therefore, be ineffectual, unless the erasure were so completed that the words originally written could not be deciphered; and glasses or other scientific means will be used to discover the words originally written. To guard against this, any alterations which may be made in the will after it is copied, and before its execution, should be clearly stated in the last clause of the will. The Act provides, indeed, for the alteration of a will; but any attempt to alter the will, by any obliteration or interlineation, after execution, is most impolitic. If the alterations proposed are extensive, it will generally be found the simpler, as it is most certainly the safer plan, to have an entirely new will prepared, in which the proposed alterations will appear. If the alterations be trifling, such as a change of trustees or executors, or an increase or diminution of a legacy, recourse may be had to a codicil; and, at the same time, the will should be looked through, to see that no other change is rendered necessary. If the will bear date before the 1st day of January, 1838, and has not been

in any manner republished, so as to bring it within the scope of the present law, it should be borne in mind, that the effect of the codicil proposed is not only to make the proposed alterations, but also to make the whole will, subject to the present Act. It should also be remembered, "that cancellation of a will, by striking it through with a pen, crossing out the names of the testator and of the witnesses, is not a revocation; for when the Legislature, after mentioning burning a will, and tearing a will, speaks of otherwise destroying a will, they must, therefore, be understood as intending some mode of destruction ejusdem generis, not an act which is not a destroying in the primary meaning of the word, though it may have the sense metaphorically, as being a destruction of the contents of the will; it never could have been their intention that the cancelling of a will should be a mode of destroying it. The term cancelling was advisedly omitted:" Sugden's Essay, p. 346. This is a point which should be explained to testators upon the execution of their wills, as most men ignorant of the state of the law would probably imagine that striking through with a pen, the whole or part of a will or codicil, would revoke or render of no effect such will or codicil, or the part so struck through.

Section 22. SECT. 22. Prior to this Act, the destruction of a second will would, by itself, have been sufficient

to revive a former will revoked by such second will, if such former will were in existence at the time of such destruction. Testators must now remember, that, by the execution of a second will, the first is absolutely revoked, and can only be revived by re-execution, in the same manner and with the same witnesses as are required for the due execution of an original will; and it must be remembered, that, though the second will be destroyed, yet evidence of its execution will be received, and will be decisive against the reception of the former will. If the first will has been partially revoked prior to the revocation of the whole thereof, care should be taken in the re-execution to shew unmistakeably whether the whole will, or only the part remaining unrevoked after the first partial revocation, is intended to be revived. If any possibility of doubt exist upon this point, it is advisable that the will to be revived should be recopied and re-executed, and, as a general rule, the cost and trouble of such recopying and re-execution will be wisely incurred to prevent the questions that may arise, whatever the care and consideration that may be bestowed upon such re-publication.

Section 23.

SECT. 23 is important, as preventing a hardship which sometimes occurred under the old law, when even an immaterial change in the mode of

holding the property devised, made after the execution of the will, such as taking a conveyance to uses to bar dower of property contracted to be purchased in fee simple, was held sufficient to revoke a devise. In construing this Act, it must always be remembered, that a will, made since it came into operation, speaks as if made at the moment of the testator's death, instead of from the date thereof.

Section 1. SECT. 24. It must be understood, that this clause has no effect to re-establish a will that has once been revoked, as in the case of a testator marrying and surviving his wife; or to establish a will originally invalid, as in the case of an infant or married woman assuming to make a will, and not revoking or destroying it after attaining twenty or surviving her husband, as the case may be. It should also be noticed, that, notwithstanding the declaration in this section that a will is to be construed as if made immediately before the testator's death, the context of the will may be sufficient to confine a gift of all the "lands now vested" in the testator, to the lands vested in him at the date of the will, and to exclude after-acquired lands: *Cole* v. *Scott*, 2 Mac. & G. 518. In the case of *Lady Langdale* v. *Briggs*, 25 L. J., N. S., 100, a testator, by his will, dated in 1835, devised to certain uses all freehold lands and hereditaments of which he or any

person or persons in trust for him was seised or entitled. By a codicil, dated in 1845, the testator devised all his lands and hereditaments comprised and devised by his said will, subject to certain charges and limitations mentioned in the will, to certain uses mentioned in the codicil, and confirmed his will, except so far as it was altered or revoked by his said codicil. It was held by Sir *John Stuart*, V. C., that lands acquired by the testator subsequently to the date of the codicil were comprised in and passed by the said will and codicil.

Section 25.

SECT. 25. The old rule, under which lands comprised in void or lapsed devises descended to the heir-at-law of the testator, was principally founded upon the especial favour with which the heir was always regarded by the law, which would not suffer him to be disinherited, except by express words to that effect; which condition was not, it was conceived, satisfied by a devise which failed to take effect. Besides, when wills were presumed to speak from the day of execution, it was reasonably to be contended, that the testator only intended the residuary devisee to be benefited to the extent of the real estate not given away from him; but this argument cannot hold good under the new law, by which after-acquired real estate passes in a general devise. The attention of testators should, however, be

called to this in cases where several real estates are devised in different ways, and, if necessary, additional limitations should be inserted to meet the case of a devisee dying in the testator's lifetime.

Section 26.

SECT. 26. A general devise of real estates will be sufficient under this section to pass all kinds of interests in lands; if, however, any part of the lands so devised consist of leasehold or other interests clearly repugnant to the limitations set out in the will, it will be prudent to devise them separately to trustees, upon trusts corresponding with the uses thereby declared, as otherwise such repugnance might furnish an argument against the presumption that such lands were intended to be comprised in such general devise. This argument would be strengthened by the fact of the will speaking as from the testator's death, and the consequent possibility that he contemplated the acquisition of real estates to which such devise might properly apply.

Section 27.

SECT. 27 is a valuable addition to Section 10, and relieves the testator from the trouble of referring to the instruments under which he holds his property, to discover whether he is entitled absolutely to the whole, or has only a power of appointment over some part thereof; and from the haste with which wills are often prepared,

this may frequently be a matter of considerable importance. Under the old law a devise, if executed in the manner required for an execution of a power, might take effect as an appointment, but only if the testator had no property to which the will was applicable as a devise. It will be remarked, that the rule last referred to could not consistently be maintained after the important change effected by Section 24. It has been remarked, that, in a general devise under this Act, its possible operation as an appointment should be noticed with reference to the statute of uses, and the effect of attempting to limit a use upon a use; and for this reason it will be desirable to avoid all limitations to devisees to uses, and to devise directly to the parties intended to take the legal estate. The case of *West* v. *Ray*, before noticed, must, however, be borne in mind. It will be seen that the effect of this section only extends to lands over which the testator has a general power of appointment. A general devise or bequest to persons in whose favour the testator had a power of appointment, would not be an execution of such limited power of appointment.

Section 28.

SECT. 28 puts an end to many questions that were likely to arise under loosely drawn devise of real estate, and undoubtedly has the merit, in a great majority of instances, of meeting the real

views of the testator more accurately than the old law, which (probably from that regard to the heir-at-law before noticed) held that a devise without words of limitation or inheritance would not pass more than an estate for the life of the devisee. The injustice occasioned by this rule was in some degree diminished by the construction which was put upon certain words, such as "estate," which were held to pass the whole interest of the testator; but even then the real object of the testator was only attained by putting a forced construction upon his words; for, though a layman, devising his lands at —— to A. B., without further words of limitation, clearly intended that A. B. should have all his the testator's estate therein, yet it is no less clear, that in a devise of all his estate at —— he meant no more than he would have done by a devise of lands at the same place.

Section 29.

SECT. 29 prevents, in most cases, the possibility of one of the most doubtful questions arising to which a will under the old law could give rise. As a devise after an indefinite failure of issue of any person would necessarily be void for remoteness, however soon such failure of issue might occur, the great object in the case of such a devise was, if possible, so to construe the will as to give an estate tail by implication to the person upon the failure of whose issue the

subsequent devise was to take effect; such estate tail being barrable by the person entitled, rendered the subsequent devise no longer too remote. The text books on wills contain numerous cases shewing the widely differing decisions which had been pronounced upon questions of this nature. It will be remarked, that the case of the person upon failure of whose issue such subsequent estate is to arise, having an estate tail by any other means than such implication, is excepted from the operation of this clause, and that any estate tail by such implication is thereby negatived.

Section 30.

SECT. 30. Previous to this Act many grave questions arose upon devises to trustees, as to whether the trustees took all the estate of which the testator had the power of disposing, or only such a limited interest as was necessary for enabling them to carry out the trusts reposed in them. The importance of the question, involving as it did the title to the legal estate in the property devised, will be at once apparent.

Section 31.

SECT. 31 carries out the intention of the last section; but it is evident from it that a devise to trustees without any words of limitation, upon trusts necessarily continuing only during the life of such tenant for life, would be held to give to

such trustees only an estate pur autre vie during the life of such tenant for life.

Section 32.

SECT. 32 provides for the case of tenants in tail under a will dying in testator's lifetime, leaving issue inheritable under the entail thereby created. As an estate in tail is for all practical purposes equivalent to an estate in fee simple, the justice of placing the issue of a devisee in tail who dies before the testator, in a better position than the issue of a devisee in fee so dying, is not very apparent. It should be mentioned, that Lord St. Leonards has expressed the opinion that some of the issue inheritable under the devise who were living at the death of the tenant in tail, must be living at the death of the testator. This opinion is not generally entertained, and, if it were to be established, would, in many cases, render this section nugatory. It would be a singular effect of this section, if the taking by the grandchild of a devisee in tail, who, and whose eldest son had died in the testator's lifetime, were to depend upon the existence at the testator's death of some younger child of the testator, who would clearly not take himself; but this would be the effect of the section if Lord St. Leonards' opinion be maintained.

Section 33.

SECT. 33. The case of *Eccles* v. *Cheyne*, 2 Kay

& J. 676, has already been noticed in the Introduction. The reasoning of the Vice-Chancellor Sir *W. P. Wood*, in his judgment upon that case, appears conclusive, and there is perhaps little reason to doubt that the decision in *Eccles* v. *Cheyne* will hereafter be followed; still it must be remembered that the case of *Eccles* v. *Cheyne* decides only the case of a parent having a general power of appointment, and executing the same by will in favour of a child who dies in the testator's lifetime, leaving issue, who survive the testator, and that in the case of such parent having only a limited power of appointment, the rule laid down in the case of *Griffiths* v. *Gale*, 12 Sim. 327 and 354, will apply. In that case, a parent having a power of appointment in favour of her children, appointed a share by will to one of her sons, who died in the lifetime of his mother, leaving issue, who survived the testatrix; and Sir *L. Shadwell*, V. C., held that the provision in this section against lapse did not apply. In his judgment, Sir *L. Shadwell* draws no distinction between the cases of the parent having a general or a limited power of appointment; and considering that the case of *Griffiths* v. *Gale* has been long followed, and that the case of *Eccles* v. *Cheyne* is recent, and has not yet been followed by other judges, it will be prudent for a testator to avoid all question by an alteration and re-execution of his will upon the

death of a child in whose favour an appointment had been made by such will. This section "does not substitute the surviving issue for the original devisee or legatee, but makes the gift to the latter take effect notwithstanding his death in the testator's lifetime, as if his death had happened immediately after that of the testator (and whether it happened before or after the date of the will, though not if it happens before the Act came into operation). The subject of gift, therefore, will, to all intents and purposes, constitute the disposable property of the deceased alone, and as such will either devolve on his representatives, or follow the dispositions of his will, so far as that will, according as it may be regulated by the new or old law, is capable of disposing, and does dispose of, after-acquired property. Hence occurs this rather novel result, that it cannot be predicated of any will of a deceased person, whose parent or more remote ancestor is living, what may be the extent of property which it will eventually comprise, and no final distribution can be made pending this possibility of accession:" 1 Jarm. on Wills, 2nd ed. p. 291; *Johnson* v. *Johnson*, 3 Hare, 157. It must be remembered, that any will made before 1838, but republished afterwards, comes within the operation of this Section. It has even been held, that a will made before this Act came into operation, bequeathing a legacy to a child who

died in the testator's lifetime leaving issue, who survived the testator, and which will was republished by a codicil relating to other matters after this Act came into operation, and also after the death of the legatee, took effect under this and the following Section.

SECT. 34. In executing any codicil to a will made before 1838, and not since re-published, the additional force which it will have under this Act will have to be borne in mind; and it should be seen, that the testator has no powers of appointment which he purposes to leave unexercised, and also that there are no devises in tail, or devises or bequests to children, which are lapsed as the law stands with regard to old wills, but which may take effect under the 32nd and 33rd Sections if the will be re-published.

Section 34.

CONCISE

PRECEDENTS OF WILLS.

No. I.

WILL *of* PERSONALTY.—*Bequest of Wearing Apparel, Jewels, &c., to Wife, and Mourning to Children and Servants.—Bequest of Leaseholds and all other Personalty to Trustees, In Trust to convert the same into Money and invest the Money in the Purchase of Stock, and stand possessed thereof, upon Trusts for securing an Annuity to Testator's Wife, and Portions to Children.—Residue to Children equally.*

THIS IS THE LAST WILL of me, A. B., of &c. I direct that my funeral may be as private as decency will permit.* I BEQUEATH to my wife C.D. all her wearing apparel and ornaments of her person, and all my plate, plated articles, linen, books, pictures, prints, wines, carriage horses, carriages, china, glass, household goods and furniture, for her absolute use. I BEQUEATH

Bequest of wearing apparel and furniture to testator's wife.

Bequest of legacy.

to my said wife the sum of £——, to be paid to her within one calendar month after my death (*a*). I give mourning to each of my children and servants. I GIVE all my leasehold and personal estate not specifically bequeathed, unto E. F., of &c., and G. H., of &c., their executors, administrators, and assigns, UPON TRUST that they, or the survivor of them, or the executors or administrators of such survivor, hereinafter called the trustees or trustee, shall, as soon as conveniently may be (*b*), sell, call in, and convert into money, all my said personal estate not hereinbefore specifically bequeathed, which shall not consist of money, and shall, out of the money to arise from such sale, calling in, and conversion into money, and the money of which I shall be possessed at my death, pay my debts, legacies, funeral and testamentary expenses, and shall invest the residue of the said monies in their or his

Bequest of general personal estate to trustees,

upon trust to sell and convert into money,

and pay debts, legacies, funeral, and testamentary expenses;

and to invest the residue;

(*a*) The general time for payment of legacies is not till twelve months after the testator's death. If the legacy be given for present purposes, as in the case in the text, a direction should be added as to its payment within a limited time, as above.

(*b*) This is the ordinary trust for the conversion into money of personalty. If, however, any considerable part of the testator's property consist of stocks or shares, liable to great fluctuations in value, it will be to be considered, whether special powers should not be given to the trustees to defer the sale of any such property; as it must be borne in mind, that, without such powers, the depreciated value of the property does not in any degree authorise them to postpone the sale.

names or name, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, (or in or upon the shares, stocks, or securities of any company incorporated by Act of Parliament and paying a dividend (*c*)), with power for the said trustees or trustee to vary the said stocks, funds, shares, and securities, at their or his discretion; And shall, out of the income (*d*) of the said trust funds, pay an annuity of £—— to my said wife during her life, without deduction, the same to

and pay an annuity of £— to testator's wife,

(*c*) It is very usual now to authorise the investment of trust property upon the shares or securities of public companies; at the same time, it ought to render testators giving such powers doubly careful as to the selection of trustees. If it be wished to authorise an investment upon the security of any company, but not in the shares or stocks of such company, the words "shares, stocks, or" in the text, should be omitted. In the latter case, the testator would probably wish to authorise an investment in guaranteed shares; in which case, he should add, after the word 'dividend,' "or in or upon any stock or shares in any company so incorporated as aforesaid, the payment of a dividend upon which stock or shares shall be guaranteed by the same or any other such company as aforesaid."

(*d*) In the precedent in the text, the annuity to the testator's wife is directed to be paid out of the annual income of the residuary personal estate; in which case, the widow would be entitled to call upon the trustees, at the division of the testator's property, to purchase a sufficient amount of £3 per cent. Consols to answer her annuity. It will be found more convenient, in many cases, for the will to direct the purchase by the trustees from some insurance company of an annuity for the life of the person to be benefited.

be paid by equal half-yearly payments, on the 24th day of June and the 25th day of December in every year, the first payment to be made on the first day of payment after my death; And, subject thereto, shall, out of the said trust funds, raise and pay to each of my sons (e) who shall attain the age of twenty-one years the sum of £——, the same to be paid to him at his age of twenty-one years, or at my death, whichever shall last happen; And also raise and pay to each of my daughters the sum of £——, the same to be paid to her at her age of twenty-one years or day of marriage, which shall first happen, if the same shall happen after my death, but if the same shall happen in my lifetime, then at my decease; And shall hold the residue of the said trust funds, and the annual produce thereof, in trust for all my children or any my child who being sons or a son shall attain twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one, in equal shares. PROVIDED always, that the said trustees or trustee may, subject to the payment of the said annuity of £——, at their or his discretion, raise any part or parts of the then expectant presumptive or then vested share or fortune of any child, under the trusts hereinbefore contained, not exceeding in the whole for any such child one half part of his or her then ex-

and legacies to children,

and hold the residue in trust for testator's children.

Advancement.

(e) In all bequests to children, the 33rd section of the Wills Act, and the observations upon it (supra, p. 183), must be borne in mind.

pectant presumptive or vested share or fortune, and apply the same for his or her advancement or benefit (*f*). And I hereby declare, that the said trustees or trustee shall, subject to the payment of the said annuity of £——, apply the whole, or such part as they or he shall think fit, of the annual income of the share or fortune to which any child shall for the time being be presumptively entitled under the trusts hereinbefore declared, for or towards the maintenance or education of such child, either directly or to his or her guardians or guardian, without seeing to the application thereof, or requiring any account for the same (*g*). And shall, during such suspense

Maintenance clause.

Accumulation clause.

(*f*) This is a most important clause, and should never be omitted in a will of this nature. It will be observed, that, under this and the two following clauses, the interests of a minor are provided for, although, from his death under twenty-one years, he may never actually become entitled, except under these provisions, to any benefit from the testator's will.

(*g*) This is another essential clause in all wills providing for infants, especially where the interests of such infants are not to take effect till the attainment of twenty-one years. The provision authorising the payment of the maintenance money to the guardians is very desirable; as, otherwise, the trustees would themselves be bound to see to and control the expenditure, a responsibility which ought not to be thrown upon them, and which would, of itself, be sufficient to prevent many persons from accepting the trusts. It will be remarked, that such payment to guardians is optional with the trustees, and that they may themselves, if they think fit, superintend the expenditure of this money.

of absolute vesting, accumulate the residue (if any) thereof in the way of compound interest, by investing the same and the resulting income thereof from time to time in or upon any such stocks, funds, shares, or securities as are hereinbefore mentioned, for the benefit of the person or persons who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulation of any preceding year or years, and apply the same for or towards the maintenance or education of the child or children who shall for the time being be presumptively entitled to the same respectively (*h*). I DEVISE all the freehold and copyhold estates vested in me upon mortgage, to the said E. F. and G. H., their heirs and assigns, subject to the equity of redemption subsisting therein respectively, but the money secured on such mortgages to be considered as part of my personal estate. I APPOINT my said wife and the said E. F. and G. H. guardians of my infant children. AND I appoint the said E. F. and G. H. executors of this my will;

Devise of mortgage estates.

Appointment of guardians.

Appointment of executors, with

(*h*) In the absence of this clause, the only safe course for the trustees to pursue would be to invest the whole unapplied income of the property in the £3 per cent. Consols, that being the fund in which the Court of Chancery would direct their investment, however disadvantageous such investment might appear to be. The power to resort to the accumulations of past years is also useful, to meet increasing expenses.

and authorise the acting executors or executor for the time being of this my will to satisfy any debts claimed to be owing by me or my estate, and any liabilities to which I or my estate may be alleged to be subject, upon any evidence they or he shall think proper, and to accept any composition or security for any debt, and to allow such time for payment (either with or without taking security) as to the said acting executors or executor shall seem fit, and also to compromise, or submit to arbitration, and settle, all accounts and matters belonging or relating to my estate, and generally to act in regard thereto as they or he shall deem expedient, without being responsible for any loss thereby occasioned (*i*). AND I hereby declare that the receipts or receipt in writing of the trustees or trustee for the time being, acting in the execution of any of the trusts hereof, for the purchase money of premises sold, or for any monies, funds, shares, or securities, which may be paid or transferred to them or him in pursuance hereof, or of any of the trusts hereof, shall effectually discharge the pur-

Power to arrange and compromise.

Trustees' receipt clause

(*i*) This clause is very useful, as it enables the executors to act as the testator might have done in the case of debts owing to him or claimed against his estate; and prevents the executors from being compelled to have recourse to legal proceedings in every doubtful case. In cases where the testator is engaged in trade, or has any money outstanding upon doubtful securities, some such proviso as that in the text is absolutely necessary, to enable his executors to wind up his affairs with safety, without having recourse to the Court of Chancery.

chaser or purchasers or other the person or persons paying or transferring the same therefrom, and from being concerned to see to the application, or being answerable for the misapplication or nonapplication thereof (*k*). AND I hereby declare, that, if the said trustees hereby appointed or either of them, or any trustee or trustees to be appointed as hereinafter is provided, shall die, or be desirous of being discharged, or refuse or become incapable to act, then and so often the said trustees or trustee (and for this purpose any retiring trustee shall be considered a trustee) may appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying or desiring to be discharged, or refusing or becoming incapable to act; And upon every such appointment the said trust premises shall be so transferred, that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as the case may require; And every such new trustee shall (both before and after the said trust premises shall have become so vested) have the same powers, authorities, and discretions, as if he had been hereby originally appointed a trustee. AND I declare that the trustees or trus-

Power to appoint new trustees.

Trustees' in-

(*k*) The effect of this clause is, to prevent the extremely inconvenient consequences that may arise from persons who have to pay money to the trustees under the will, being affected with notice of the trusts upon which such money is directed to be held. In the present case the property being entirely personalty, and the trustees being also executors, the clause is not abolutely necessary.

tee for the time being of this my will shall be chargeable only with such monies as they or he respectively shall actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any of the trust monies shall be placed, nor for the insufficiency of any stocks, funds, shares, or securities, nor otherwise for involuntary losses; AND that the said trustees or trustee for the time being may reimburse themselves or himself, out of the monies which shall come to their or his hands under the trusts aforesaid, all expenses to be incurred in or about the execution of the aforesaid trusts (*l*). IN WITNESS whereof, I the said A. B. have, to this my last will, contained in this and —— preceding sheets of paper, set my hand this —— day of ——, 18—.

demnity clause.

Power to reimburse themselves their expenses.

[*Testator's signature.*]

Signed and acknowledged by the said A. B. as his will, in the presence of us, present at the same time, and who, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

[*Signatures and descriptions of witnesses.*]

(*l*) These three clauses should never be omitted in a will imposing upon trustees the management of property; without the protection which they afford, no prudent person would willingly undertake the duties and responsibilities of a trustee, and an appeal to the Court of Chancery would most probably be rendered necessary.

No. II.

WILL *of* REAL *and* PERSONAL PROPERTY. —*Devise of Real Estates to Trustees, upon Trust to accumulate Rents for twenty-one Years; and, subject thereto, to the Second and other Sons of Testator's Daughter.—Bequest of Residue of Personalty to be invested in Lands, to be held upon the same Trusts.— Appointment of Executors. — (Usual Clauses).*

Devise of lands to trustees—

THIS IS THE LAST WILL of me, A. B., of &c. I DEVISE all my real estates, except what I otherwise devise by this my will, and except estates vested in me as trustee or mortgagee, unto and to the use of C. D., of &c., and E. F., of &c., their heirs and assigns, UPON TRUST that the said C. D. and E. F. and the survivor of them, and the heirs and assigns of such survivor, shall, during the term of twenty-one years (*a*), receive the rents and

In trust to accumulate for 21 years;

(*a*) The time during which a testator may direct the accumulation of his property after his death cannot, under any circumstances, exceed twenty-one years, except in the case of a devise or bequest to any one *in ventre sa mère* at the testator's death, when the accumulation may continue until the majority of such devisee or legatee; and except in the case of provision for the payment of debts, or for portions for children. Care should be taken that this law

profits of my said real estates, and shall, from time to time, invest the same in the names or name of the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, hereinafter called the trustees or trustee, in any of the public stocks or funds of Great Britain, or upon Government or real security in England or Wales, (or in or upon the shares, stocks, or securities of any company incorporated by Act of Parliament and paying a dividend), with power for the said trustees or trustee to vary the said stocks, funds, (shares), and securities, at their or his discretion; And shall receive the dividends, interest, and annual produce of the said stocks, funds, (shares), and

is not in any manner attempted to be infringed; as, although the direction to accumulate would be held good, so far as the same could be maintained without exceeding the limits prescribed, yet difficult questions may arise as to the disposal of the income during the period for which its intended accumulation shall be illegal. The intentions of the testator, if attempted to be carried out literally, would frequently transgress the limit which the law has placed to accumulations. The Act 39 & 40 Geo. 3, c. 98, which restrains within its present limits the power of directing accumulations, authorises accumulation for twenty-one years, or the minority of any person living or *in ventre sa mère* at the death of the testator. And it has been argued, that the clause would permit direction for accumulation for both the space of twenty-one years and a minority; but the contrary opinion is generally entertained. (See *Griffiths* v. *Vere*, 9 Ves. 136; *Haley* v. *Bannister*, 4 Madd. 275; *Ellis* v. *Maxwell*, 3 Beav. 587).

securities, and invest the same upon such stocks, funds, (shares), and securities, as aforesaid, so that the same rents and profits, stocks, funds, (shares), and securities, dividends, interest, and annual produce, may accumulate during the said term of twenty-one years; And, subject to the trusts aforesaid, upon trust that the said trustees or trustee shall stand seised of my said real estates, IN TRUST for the second and every other son of my daughter G. H., of &c., except an eldest or only son, for the time being, successively, according to their respective seniorities, in tail male, with remainder in trust for all the daughters or any the daughter of the said G. H., as tenants in common in tail, with cross remainders between or among them in tail; and if there shall be but one such daughter, the whole to be in trust for such one daughter in tail; With remainder in trust for J. K., of &c., his heirs and assigns for ever. AND I hereby declare, that it shall be lawful for the said trustees or trustee, during the aforesaid term of twenty-one years, at their or his discretion, and after the end of the said term of twenty-one years, with the consent of the person or persons in the receipt of the rents and profits of my said real estates, if of full age, but if not, with the consent of the guardian or guardians of such person or persons respectively, to demise all or any part of my said real estate for any term of years absolute, not exceeding twenty-one years, to take effect in possession, so as there be reserved on every such demise the best yearly

and subject thereto,

In trust for second and other sons of testator's daughter in tail male;

remainder to J. K. in fee.

Power for trustees to lease during the term of accumulation.

rent or rents, to be incident to the immediate reversion, that can be reasonably gotten, without taking any fine, premium, or foregift, or anything in the nature thereof, and so as there be contained in every such demise a condition of re-entry for nonpayment within a reasonable time, to be therein specified, of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and be not made dispunishable for waste. AND I hereby direct, that the said trustees or trustee shall hold the said rents and profits, stocks, funds, shares, and securities, dividends, interest, and annual produce hereinbefore directed to be accumulated IN TRUST for such son, not being an eldest son of the said G. H., living at the end of the said term of twenty-one years, who shall first attain twenty-one years; But in case no son of the said G. H. (not being an eldest or only son) shall be living at the end of the said term of twenty-one years who shall attain twenty-one years, IN TRUST for all the daughters or any the daughter of the said G. H., living at the end of the said term of twenty-one years, who shall attain twenty-one years or be married, if more than one in equal shares(*b*); But in case there shall be no daughter

Trusts of accumulations.

Upon trust for such younger son of G. H. living at the end of said term of twenty-one years as shall soonest attain the age of twenty-one years;

And in default of such son, in trust for the daughters of said G. H. who shall attain the age of 21 years, equally;

(*b*) It will be perceived, that these trusts for the benefit of the younger sons and the daughters of G. H., keep rigidly within the limits within which the vesting of estates may be suspended; inasmuch as by no means could the vesting of these estates be deferred under the trusts in the text beyond a period of twenty-one years after the death of G. H.

and in default of such daughters, in trust for M. N.

of the said G. H., living at the end of the said term of twenty-one years, who shall attain twenty-one years or be married, then IN TRUST for M. N., of &c., his executors and administrators.

Trusts after the expiration of said term of twenty-one years, until vesting of the said trust funds.

AND I direct, that, from the expiration of the said term of twenty-one years, until some child or children of the said G. H. shall attain a vested interest in the said trust premises and accumulations under the trusts aforesaid, or until all such children shall previously die, the dividends and annual produce of the said trust premises and accumulations shall belong and be paid to the child or children of the said G. H. for the time being presumptively entitled to such trust premises and accumulations (c).

Bequest of personalty to trustees.

AND I BEQUEATH all my personal estate, except chattels real included in the general devise of real estates hereinbefore contained, and except what I otherwise bequeath by this my will or any codicil hereto, unto the said C. D. and E. F., their executors, administrators, and assigns,

Upon trust to convert into money;

UPON TRUST that the said trustees or trustee shall, as soon as conve-

(c) Though the law forbids the testator to direct an accumulation for more than twenty-one years, yet it is not to be understood that the direction in the text means that the produce of the accumulated fund is actually to be paid into the hands of an infant. So much of the produce as is required for the maintenance and education of the infant will have to be so applied, and the residue will be accumulated during such minority, in the manner in which such produce would be applied and accumulated if the fund from whence it arose had been bequeathed to an infant without any directions.

niently may be, sell, call in, and convert into money, such part of my personal estate as shall not consist of money, And shall invest the same, and the money of which I shall die possessed, in the purchase of freehold estates in England, or of copyhold estates convenient to be held therewith, to be settled to the same uses, upon the same trusts and purposes, and under and subject to the same powers, provisoes, and limitations, as are hereinbefore declared of my said real estates, or such and so many of them as shall be then subsisting, undetermined and capable of taking effect.

and invest the money in the purchase of lands,

to be held upon the trusts before mentioned.

AND UPON TRUST, that the said trustees or trustee shall, until a proper purchase or proper purchases can be found, invest the said monies in their or his names or name in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, to be altered and varied at the discretion of the said trustees or trustee as occasion may require, and shall pay the annual income of such trust funds in like manner as the rents and profits of the real estate, so directed to be purchased with the residue of my personal estate as aforesaid, would go and be applicable under the directions of this my will.

And upon trust, until such purchase, to invest in Government or real securities.

I APPOINT the said C. D. and E. F. executors of this my will. (*Power to arrange and compromise, p.* 194.—*Power for trustees to give receipts.—Power for the appointment of new trustees.—Trustees' indemnity clause, see pp.* 195, 196, 197). IN WITNESS &c.

Appointment of executors; with power to arrange and compromise.

Trustee clauses.

No. III.

WILL *of* REAL *and* PERSONAL ESTATE.—*General Devise of Real Estates to Testator's Children in Tail Male, with Remainders over.—Bequest of Stocks and Funds, and Railway Shares and Securities, Upon Trust for Testator's Widow during her Life, and after her Death for Testator's younger Children, with Powers of Advancement, Maintenance, and Education; And in default of such Children, for Testator's Sister for Life, with an ultimate Trust for the Children of the said Testator's Sister, and Children of deceased Brother.—Bequest of Residue of Personal Estate, subject to the Payment of Funeral and Testamentary Expenses and Debts. (Usual Clauses).*

Devise of real estates to testator's wife for life; remainder in strict settlement.

THIS IS THE LAST WILL of me, A. B., of &c. I DEVISE all my real estates unto and to the use of my wife C. D., for her life, without impeachment for waste, With remainder unto the use of my first and other sons successively, according to their respective seniorities, in tail male (*a*), With

(*a*) It is most usual, in devises of real estate to the fa-

remainder to the use of my daughter and daughters, if more than one, as tenants in common in tail, with cross remainders in tail, With remainder to the use of my sister E. F., of &c., for her life, without impeachment of waste, With remainder to the use of the first and other sons of the said E. F. successively, according to their respective seniorities, in tail male, With remainder to the use of the daughters and daughter of the said E. F., if more than one, as tenants in common in tail, with cross remainders in tail, With remainder to my own right heirs. I BEQUEATH all my money in any of the Parliamentary stocks or public funds of Great Britain, and all my railway stocks, shares, debentures, and securities, to G. H., of &c., and I. K., of &c., UPON TRUST that they, or the survivor of them, and the executors and administrators of such survivor, shall

Bequest of stocks and funds to trustees.

mily of the testator, to limit life estates only to the children of the testator, and to make the children of such tenants for life respectively tenants in tail or in tail male. In the latter case, of course, the estate is preserved in the family for an additional generation; and for this reason testators will comparatively seldom desire to avail themselves of the precedent in the text. In cases, however, where the will is required to be prepared in haste, or where the testator is from any cause prevented from bestowing much attention on the details of his will, it will be found more expedient to devise the estate to the children in tail than to limit successive life estates, where there is a risk of omitting any of those numerous powers which are necessary for the due enjoyment and improvement of an estate so held.

either (*b*) permit the same to remain in their actual state of investment, or shall, at their or his discretion, but with the consent in writing of my wife during her life, alter, vary, or transpose the same stocks, funds, shares, or securities into or for other stocks, funds, shares, or securities of the same or a like nature; And shall pay the dividends, interest, and annual produce of such stocks, funds, shares and securities, unto my said wife during her life; And, after the death of my said wife, shall hold the same stocks, funds, shares, debentures, and securities, IN TRUST for my children or child (except a son or sons who or whose issue shall become entitled to my said real estate under this my will), who, being a son or sons, shall attain twenty-one years, or, being a daughter or daughters, shall attain that age or marry, to be divided among them (if more than

upon trust for testator's wife for life, with remainder

in trust for testator's children, except a son entitled under the devise of real estate, equally.

(*b*) If this power to retain property in its actual state of investment be not inserted, it will be the duty of the trustees at once to sell or call in the property so bequeathed to them, and to invest the produce in £3 per cent. Consols. If any considerable part of the testator's property be invested in securities liable to sudden fluctuations in value, the trustees shall always be empowered, as in the text, to retain such property in its then state of investment. In default of a power to retain the property in its actual state of investment, the trustees may be held liable to account to the persons entitled in remainder, not only for any loss of principal which may arise from delay, but for the difference between the income received by the tenants for life, and the dividends of the Consols which might have been purchased. See *Dimes* v. *Scott*, 4 R[illegible]. 195.

one) in equal shares, and if there shall be but one such child, the whole to be in trust for that one child ; And if there shall be no child of mine except an eldest or only son, who, being a son, shall attain twenty-one years, or being a daughter shall attain twenty-one years or marry, then in trust for such eldest or only son, when he shall attain the age of twenty-one years (*c*). (*Advancement, maintenance, and accumulation clauses, see supra, pp.* 193, 194). AND I hereby declare, that, in case there shall be no child of mine, who, being a son, shall attain twenty-one years, or, being a daughter, shall attain that age or marry, the said G. H. and I. K., their executors, administrators, and assigns, shall, from the death of my wife, and such default or failure of issue, which shall last happen, hold the said stocks, funds, shares, and securities, including any such accumulations as aforesaid, IN TRUST to pay the dividends and annual proceeds thereof to my sister M. N., of &c., for her life, for her separate use, but so that the said M. N. shall not have power to deprive herself of the benefit thereof by any dealings therewith in the way of anticipation ; and the receipts of the said M. N., whether covert or sole, to be effectual discharges for the same ; And, after the death of the said M. N., shall transfer and pay the said trust premises, and the dividends and annual proceeds thereof, unto the child and children then living

Advancement, maintenance, and accumulation clauses.

And in default of children in trust for M. N. for life, for her separate use, without power of anticipation;

and, after her death, in trust for the children of M. N. and O. P.

(*c*) See note (*f*), p. 193.

of the said M. N. and of my brother O. P., in equal shares, as tenants in common, if more than one; and if there shall be but one such child then living, the whole to be in trust for that one child. I BEQUEATH all the residue of my personal estate, except chattels real included in the general devise of real estates hereinbefore contained, unto my said sister M. N., subject to the payment thereout of my debts, funeral, and testamentary expenses. (*Devise of mortgage estates. Appointment of executors, with powers to arrange and compromise, supra, p.* 194.—*Trustee clauses, supra, pp.* 195, 196, 197.) IN WITNESS &c. (*d*).

Bequest of residuary personal estate.

Usual clauses.

(*d*) This is an extremely simple will, from the shortness of the limitations of the real estate, and from the fact of there being no limitations thereof for life. The effect of the Act of 1 Vict. c. 26, upon bequests in favour of children dying in the testator's lifetime, and of devises in tail to persons dying in the testator's lifetime, leaving issue inheritable under the entail who shall survive the testator, will have to be borne in mind.

No. IV.

WILL *of* REAL *and* PERSONAL *Estate.—Devise and Bequest of Real and Personal Estate in Ireland.—Bequest of a Sum of Stock to Trustees, Upon Trust for Testator's Sister for Life, and after her Death for her unmarried Daughters equally; And in default of unmarried Daughters for her married Daughters.—Bequest of a Sum of Money to Trustees, Upon Trust for another Sister of Testator for Life; and after her Death for her Children equally.—Legacy to Infant.—Residuary Devise and Bequest.—Appointment of Executors, with Power to compromise.—(Usual Clauses).*

THIS IS THE LAST WILL of me, A. B., of &c. I DESIRE that I may be buried in the burial-ground nearest the place where I die, and that my funeral be as simple as may be. I DEVISE AND BEQUEATH all my real and personal estate and effects in Ireland to my brother C. D., of &c., his heirs, executors, and administrators, for his and their own use. I GIVE to the said C. D. and E. F., of &c., their executors, administrators, and assigns, the sum of £——, 3*l.* per Cent.

Directions as to burial.

Devise and bequest of estates and effects in Ireland.

Bequest of a sum of stock to trustees;

Consolidated Bank Annuities (*a*), UPON TRUST that they the said C. D. and E. F., and the survivor of them, and the executors or administrators of such survivor, hereinafter called the trustees or trustee, shall either permit the same to remain in its actual state of investment, or shall, during the life of my sister G. H., of &c., sell the same or any part thereof, and invest the money to arise thereby in their or his names or name in any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real security in England, Wales, or Ireland, (or in or upon the shares, stocks, or securities of any company incorporated by Act of Parliament and paying a dividend), with power for the said trustees or trustee to vary the said stocks, funds, and securities, at their or his discretion, yet so that, during the life of the said G. H., every such sale or variation shall be made with her consent in writing; and shall pay the income of the said trust funds to the said G. H. during her life; and after her death shall hold the said trust premises in trust for all the

with power to alter the investment thereof;

upon trust for testator's sister for life;

and after her death in trust for her

(*a*) Under the bequest in the text, the trustees would be entitled, in case the testator did not die possessed of stock sufficient to answer the legacy to them, to have that amount purchased for them at the end of one year from the testator's death. In case, however, the testator does not expect to have stock sufficient to answer all such legacies, it will be better to give a sum of money upon trust, for investment and for varying securities, as in the text.

daughters or any the daughter of the said G. H. living at her death who shall never have been married, if more than one, in equal shares; And if there shall be no daughters of the said G. H. living at her death who shall never have been married, then in trust for all the daughters or any the daughter of the said G. H. living at her death who shall have been married, if more than one, in equal shares. I BEQUEATH to the said C. D. and E. F., their executors and administrators, the sum of £——, IN TRUST that the said trustees or trustee shall invest the said sum in their or his names or name in any of the public stocks or funds of Great Britain, or at interest on Government or real security in England, Wales, or Ireland, (or in or upon the shares, stocks, or securities of any company incorporated by Act of Parliament and paying a dividend), and shall from time to time vary the said stocks, funds, and securities, at their or his discretion, yet so that, during the life of I. K., of &c., every such variation shall be made with her consent in writing; And shall pay the interest, dividends, and annual produce of the said sum of £——, and the stocks, funds, and securities, in or upon which the same shall be laid out or invested, unto the said I. K. and her assigns during her life, and after her death shall hold all the said last-mentioned trust premises, IN TRUST for all the children or any the child of the said I. K. living at her death, if more than one, equally to be divided between them. I BEQUEATH to M. N.,

unmarried daughters equally.

In default of unmarried daughters, to daughters married.

Bequest of a sum of money to trustees, upon trust for investment.

In trust for testator's sister I. K., for life;

and after her death, in trust for her children.

Legacy to

M. N.; if he should be under twenty-one when it becomes payable, the same to be paid to his father for his benefit till he attains twenty-one.

of &c., the sum of £——; and if the said M. N. shall be under twenty-one years when the same legacy shall be payable, I direct the same legacy to be paid to his father O. P., of &c., to be managed by him at his discretion, for the benefit of his said son till he shall attain twenty-one years; And in such case the receipt of the said O. P. to be an effectual discharge for the same legacy (b).

Bequest of residue.

I DEVISE AND BEQUEATH all the residue of my real and personal estate, except estates vested in me as mortgagee, unto my nephew R. S., of &c., his heirs, executors, and administrators, according to the nature thereof, for his and their own use.

Devise of mortgage estates.

I DEVISE all the freehold and copyhold estates vested in me by way of mortgage, with the appurtenances, unto the said C. D. and E. F., their heirs and assigns, subject to the equity of redemption subsisting therein respectively, but the money secured on such mortgage to be considered as part of my personal estate (c).

(b) This is a very useful proviso in cases of small legacies; without such a proviso the trustees would not be authorised in applying the legacy for the advantage or pleasure of the legatee while an infant, except under the direction of the Court of Chancery, but would be bound to invest the legacy, however small, in Consols, and to reinvest the dividends until the majority of the legatee. Of course, if the sum be large, it will be proper not to place it in the power of the father of the legatee, but to vest it in the trustees, with proper powers for its management, and for its application for the benefit of the legatee, as in Precedent No. 1.

(c) It will be generally found expedient to devise all

AND I hereby appoint the said C. D. and E. F. to be executors of this my will. AND I hereby declare that the receipt of the said C. D. and E. F., or of the survivor of them, or of the executors or administrators of such survivor, for any money payable to them or him under this my will, shall be a sufficient discharge for the money therein expressed to be received, and that the person taking such receipt shall not be answerable for the nonapplication or misapplication of the same money, or be obliged to see to the application thereof. AND I hereby authorise my said executors to pay any debts claimed from me upon any evidence they shall think proper, and to accept any security for any debt owing to me, and to make such deductions and arrangements as to such debts, and also to allow such time for the payment thereof, as to them or him shall seem fit. (*Power to appoint new trustees; Clauses for the indemnity of trustees, supra, pp.* 196, 197.) IN WITNESS &c.

Appointment of executors.

Declaration that the receipts of trustees shall be discharges.

Power to trustees to compound debts.

Trustee clauses.

real estate, vested in the testator as mortgagee, to the executors of his will, who can reconvey it to the mortgagor upon payment of the mortgage money. Considerable inconvenience may arise from allowing such real estate to descend to the heir-at-law of the testator, who may be an infant, or otherwise incapable of conveying; and if such real estate be included in the residuary devise, the executors will still be necessary parties to any reconveyance to receive the mortgage money.

No. V.

DEVISE *by the Incumbent of a Living and Owner of the Perpetual Advowson, of the same Advowson to Trustees, In Trust to present a Person above the Age of —— Years, and then to sell.*

I DEVISE (*a*) the advowson and right of patronage and presentation of and to the rectory or parish church of &c., unto A. B., of &c., and C. D., of &c., their heirs and assigns, UPON TRUST that they or the survivor of them, or the heirs of such survivor, shall present and nominate to the said cdurch such fit person, not being under

(*a*) This mode of dealing with a vacant living, devised in trust for sale, is rendered necessary by the law, which sanctions the sale of the advowson and next presentation to a living when occupied, but holds it simony to sell the advowson or next presentation of a living when vacant. In consequence, the only mode of dealing with such a property is to present some one of such an age as shall render the speedy vacancy of the living in question probable, and then to sell. Any attempt to bind the presentee to resign in favour of the future purchaser would be illegal, and no bond or other instrument to enforce such resignation would be valid. The precedent in the text can easily be altered to suit the case of an advowson devised by an owner, not the incumbent, upon trust for sale, becoming vacant before a sale can be effected.

the age of —— years at the time of such presentation, as the said A. B. and C. D., or the survivor of them, or the heirs of such survivor, shall in their or his discretion think proper, in order that such person may be inducted and become the incumbent of the said parish church of &c.; And UPON TRUST that the said A. B. and C. D., or the survivor of them, or the heirs or assigns of such survivor, shall, with all convenient speed, after such person shall be so presented and inducted as aforesaid, sell the same advowson or right of patronage and presentation, either by public auction or private contract, as they or he shall think proper, with power to insert any stipulations as to title or evidence of title, and with power to buy in the said premises at any auction, or to rescind or vary any contract for the sale thereof, without being answerable for any loss to be occasioned thereby. AND I declare that the receipt of the said A. B. and C. D. or the survivor of them, or the heirs or assigns of such survivor, for the purchase-monies of the premises sold shall effectually discharge the purchaser or purchasers, or other person or persons paying the same, therefrom, and from being concerned to see to the application thereof, or from being answerable for any nonapplication or misapplication thereof, or from being answerable for any irregularity about such induction or sale, or either of them (*b*). AND I direct that the said A. B. and

Trustees' receipt clause.

The pur-

(*b*) This clause may be dispensed with, if there be in the will a general proviso.

chase-money to be held upon the trusts of the testator's residuary personal estate.

C. D., and the survivor of them, and the heirs, executors, and administrators of such survivor, shall hold the monies to arise by the said sale upon the trusts hereinafter declared of the residue of my personal estate (*c*).

(*c*) The precedent in the text may easily be made use of as a codicil, in case the advowson has been acquired subsequently to the date of the will.

No. VI.

Will *bequeathing a Sum of Money to Trustees, Upon Trust to lay out the same in the Purchase of an Annuity, to be paid to an Insolvent so long as the Trustees shall think proper, and then upon Trusts for his Children.—Appointment of Executors.—(Trustee Clauses, &c.)*

THIS IS THE LAST WILL of me, A. B., of &c. I BEQUEATH unto C. D., of &c., and E. F., of &c., the sum of £—— (a), to be paid within —— calendar months after my decease, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, (hereinafter called the trustees or trus-

Bequest of a sum of money to trustees.

(a) In the precedent in the text the bequest is of a gross sum, to be sunk in the purchase of an annuity for the life of the insolvent. But this is liable to objections; as, in such cases, the testator seldom would desire to provide a large life income for the insolvent, which may be the consequence of the annuitant being in bad health at the death of the testator. It would, generally, more nearly meet the views of the testator, if the bequest were of such a sum, as, at the expiration of so many months from the testator's death, would be sufficient to purchase, from certain specified offices, an annuity of a certain amount on the life of the insolvent.

upon trust to invest the same in the purchase of an annuity on the life of G. H.;

tee,) shall invest the same in the purchase, in their or his names or name, either from the Commissioners for the Reduction of the National Debt, or from any insurance office or insurance offices, of an annuity or annuities for the life of G. H., of &c.; And shall stand possessed of the said annuity, upon trust that the said trustees or trustee shall, at any time or times during the life of the said G. H., in case the said trustees or trustee shall, in their or his uncontrolled discretion, think proper, but not otherwise (*b*), pay the said annuity, or any part thereof, unto the said G. H., for his own use; but in case the said trustees or trustee shall, in their or his absolute discretion as aforesaid, at any time think proper not to pay the same, or any part thereof, to the said G. H., then to pay the same, or any part thereof, if they or he shall think fit, but not otherwise, unto or for the separate use or for the maintenance of the wife and child or children of the said G. H. for the time being, or any of them, or for the education or advancement of the same children or any

and to hold such annuity upon trusts for the benefit of said G. H. and his family.

(*b*) It is absolutely necessary to give full powers to the trustees as to the payment or nonpayment of the annuity, as, in case the trust were so worded as to enable the insolvent to compel the payment to him of any part of the said annuity, such part would of course at once become liable to the claims of his creditors. The power to apply the annuity for the benefit of the wife and family of the insolvent is also useful, as it prevents the creditors from compelling him to give up to them any part of the annuity after it has been paid.

of them, in such manner and in such proportions as the same trustees or trustee for the time being shall approve; and shall accumulate any part of the same annuity which shall remain unapplied for any of the purposes aforesaid, and the yearly produce of such accumulations, in any of the parliamentary stocks or public funds of Great Britain, yet so that such period of accumulation shall not extend beyond twenty-one years from my death (*c*); and shall stand possessed of the said accumulations upon the trusts hereinbefore declared of the said annuity (*d*). And as to so much of the said annuity as shall be due or unapplied at the death of the said G. H., and of the said accumulations as shall be then in the hands of the said trustees or trustee, upon such trusts as the said G. H. shall by will or codicil appoint; and in default of such appointment, in trust for the person or persons who, under the statute for the distribution of the estates of intestates, would be entitled thereto at the death of the said G. H., in case the said G. H. had died possessed thereof intestate; such persons, if more

(*c*) At the end of twenty-one years from the testator's death, the trustees, in obedience to the law respecting accumulations, will be compelled to apply the whole of the annuity, and the whole annual produce of any accumulations of the unapplied part thereof.

(*d*) The effect of this is to authorise the application by the trustees of the gross amount of any accumulations for the advancement of any child of the insolvent, if they should think fit.

than one, to take as tenants in common in the shares in which they would have so become entitled. AND I appoint the said C. D. and E. F. executors of this my will. (*Power for executors to arrange and compromise, p. 194.—Trustees' receipt clauses; Power for the appointment of new trustees; Proviso for the indemnity of trustees, pp. 195, 196, 197.*) IN WITNESS &c. (*e*).

Appointment of executors; with power to compromise.

Trustee clauses.

(*e*) The precedent in the text is a good mode of providing for an insolvent, or for a person in whose prudence the testator is disposed to place no reliance, when the person so to be provided for is tenant for life of any property, which, after his death, will devolve upon his family; or when, from other sources, the family of such person will be provided for on his death. From the extreme delicacy of the duties imposed upon the trustees, especial care should be taken in their selection. In case the testator merely desires to provide for a person engaged in trade, or likely to become involved, the annual produce of the trust funds should be directed to be paid to him until he become bankrupt, insolvent, or attempt to assign or mortgage his interest therein. It is, no doubt, an object of great importance at times, that the provision for a man and his family should be placed beyond the chances of trade or the risks of his own improvidence; but it must be borne in mind, that the consequences of this mode of settlement may be, that the party intended to be benefited may be forced to bankruptcy or insolvency, when, if he were entrusted with the absolute management of the trust funds, such result might be prevented by a small sacrifice.

No. VII.

CODICIL *by a Testator who has contracted for the Purchase of Lands, directing that the Acceptance or Rejection of the Title thereof shall be left to the Discretion of Trustees.*

I, A. B., of &c., DO DECLARE this to be a CODICIL TO MY WILL, dated the —— day of ——. WHEREAS I have contracted with X. Y., of &c., for the purchase of an estate in the county of ——: Now I hereby declare, that the said estate, for the purchase of which I have so contracted, whether the same purchase shall or shall not be completed in my lifetime, shall be considered to be included in and to pass by the devise in my said will contained of my real estates in the county of ——. AND I declare, that in case the title of the said estate shall not have been finally accepted by me in my lifetime, the acceptance or rejection of such title shall be left to the discretion of C. D. and E. F., (trustees named in my said will), or the survivor of them, or other the trustees or trustee for the time being appointed in their place; and that my executors or my residuary legatee shall not be entitled to object to or question such title, and shall

have no voice in the acceptance or rejection thereof. IN WITNESS &c. (*a*).

(*a*) This codicil is important, as it must be remembered, that unless the devisee of the estate contracted to be purchased and the residuary legatee of the personal estate of the testator be the same person, the residuary legatee has a direct interest, to the amount of the purchase-money, in preventing the purchase from being completed; and without his concurrence the executors would not be authorised in applying any part of the testator's personal estate towards the purchase, unless upon such a title being shown as a court of equity would compel a purchaser to accept. Of course the duty of the trustees named in the codicil is only to accept such a title as will render the person taking it substantially safe.

No. VIII.

Will *of a* Trader.—*Bequests of Legacies to Children.—Bequest of a Legacy to a Hospital.—Bequest of Legacy to a Servant.—Devise and Bequest of Real and Personal Estate to Trustees, Upon Trust for Sale and Conversion into Money; Trusts of Money to arise from such Sale and Conversion, to pay Funeral and Testamentary Expenses, Debts, and Legacies, and to invest the Residue on Government or Real Securities, with Power to vary the same, and pay the Produce to Testator's Wife for her Life, and after her Death to divide the said Residue equally among Testator's Children; The Shares of Daughters to be for their separate Use, without Power of Anticipation; The Share of each Daughter after her Death to be held in Trust for her Children, as she shall appoint; and in Default of Appointment, in equal Shares; In Default of Issue of any Daughter, the Share of such Daughter to be held upon such Trusts as she shall appoint; in Default of Appointment, in Trust for Testator's other Children equally.—Power*

for Daughters to appoint the Interest of their Shares to their respective Husbands for Life.—Power for Daughters on Marriage to settle their Shares.—Power for Trustees to defer the Sale of Part of Testator's Property.—Power for Trustees, with Consent of Children who shall have attained Twenty-one, to allot Part of Testator's Property.—Directions to apply Produce of Property till a Sale, as the Interest of the Purchase-money is directed to be applied.—Appointment of Guardians of Infant Daughters.—Directions as to managing and winding-up Testator's Business.—Devise of Mortgage Estates.—Appointment of Executors.—Trustee Clauses.

THIS IS THE LAST WILL of me, A. B., of &c.

Bequest of legacies to children.

I BEQUEATH to each of my children, C. D., E. F., and G. H., the sum of £——, with interest at the rate of £5 per cent. per annum from my death till the payment thereof, such interest to be paid half-yearly. AND I hereby declare, that if my said daughter G. H. shall be under twenty-one years at my death, and shall not have married, the legacy hereby given to her shall be retained by my trustees hereinafter named, their executors or administrators, UPON TRUST to pay the same to her when she shall attain twenty-one years or marry; And UPON TRUST in the

mean time to pay the interest of such legacy to her, and her receipt, notwithstanding her infancy, to be an effectual discharge for the same (a); And if the said G. H. shall not attain twenty-one years or marry, the same legacy shall, upon her death, sink into my residuary estate. I BEQUEATH the sum of £—— to the governors of the —— hospital for the benefit of that institution; And I declare that the receipt of the treasurer for the time being of the hospital shall be an effectual discharge from the same legacy, which I direct to be paid within one month after my death out of my chattels personal, free from legacy duty, which I direct to be paid in the like manner (b). I BEQUEATH to my servant

Bequest of a legacy to a hospital.

Bequest of a

(a) This is a not uncommon proviso in the case of legacies of small amount to infants. If the legacy should be an important part of the infant's fortune, it would be desirable to give the executors power for its investment, and for varying the securities; and also to provide for its being regularly settled upon the marriage of the infant, if a female. In the case in the text, the executors would be bound to invest the legacy to the infant daughters in the £3 per cent. Consols; and the legacy, in case no settlement were made, would become the absolute property of the husbands of the infants, subject, if the executors should think fit, to some part of it being settled, at the discretion of the Court of Chancery, on the infant and her children.

(b) If the proviso in the text as to the funds out of which this legacy is to be paid were omitted, only such a proportion of the legacy would be recoverable as the per-

legacy to a servant.

I. K., in case she shall be in my service at my death, the sum of £—— over and above any money then due to her by me; the said sum of £—— to be paid to her within one month after my death, free from legacy duty. I DEVISE all my real estate, except what I otherwise devise by this my will, and except estates vested in me as a trustee or upon mortgage, unto M. N., of &c., and O. P., of &c., their heirs, executors, and administrators respectively, according to the nature and tenure thereof, UPON TRUST that the said M. N. and O. P., or the survivor of them, or the heirs, executors, or administrators respectively of such survivor, shall, as soon as conveniently may be, sell the same, either together or in parcels, and either by public auction or private contract, with full power to insert any stipulations as to title or evidence of title, and with full power to buy in and rescind any contract for sale, and to re-sell, without being responsible for any loss occasioned thereby, and to do all such acts and assurances for effectuating any such sale as they or he shall think fit. I BEQUEATH all my personal estate, (except chattels real included in the general devise hereinbefore contained of real estate, and except what I otherwise bequeath by this my will), unto the said M. N. and O. P., their

Devise of real estate to trustees;

upon trust for sale.

Bequest of personal estate to trustees;

sonalty of the testator, applicable to the payment of such a legacy—that is, the part not in any way secured upon, or consisting of, land—bears to his whole real and personal estate.

executors and administrators, UPON TRUST that the said M. N. and O. P., or the survivor of them, or the executors or administrators of such survivor, shall, as soon as conveniently may be, sell, call in, and convert into money such part of my said personal estate as shall not consist af money.

upon trust for sale and conversion into money.

AND I declare, that the said M. N. and O. P., or the survivor of them, and the heirs, executors, and administrators of such survivor, shall, by and out of the monies to arise from the sale of my said real estate, and from the sale, calling in, and conversion into money of such part of my said personal estate as shall not consist of money, and the money of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will or any codicil hereto; And shall invest the residue of the said monies in the names or name of the said M. N. and O. P., or the survivor of them, or the executors or administrators of such survivor (hereinafter called the trustees or trustee,) in or upon any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, (or in or upon the shares, stocks, or securities of any company incorporated by Act of Parliament and paying a dividend), with power for the said trustees or trustee to vary the said stocks, funds, shares, and securities, at their or his discretion.

Trusts of money to arise from such sale and conversion; to pay funeral and testamentary expenses, debts, and legacies; and to invest the residue in Government or real securities; with power to vary the same;

AND I declare, that the said trustees or trustee shall pay the annual income of the said trust funds to my dear wife during her life; And after

and pay the produce to testator's wife for her life; and,

after her death, the same to be divided among testator's children equally.

her death shall hold the said trust premises IN TRUST for all my children or any my child, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry, and if more than one in equal shares.

Declaration that the shares of daughters shall be held upon trust to pay the interest to such daughters for life, for their separate use, without power of anticipation.

AND I declare, that the share of each such daughter in the said trust premises shall be held by my said trustees or trustee, UPON TRUST that they or he shall, during the life of each such daughter, pay the interest of her said shares into her proper hands for her separate use, independent of any husband, but so that such daughter shall not have power to deprive herself thereof by sale, mortgage, charge, or otherwise, by way of anticipation.

And after each daughter's death, her share to go to her children, as she shall appoint.

AND after the death of each such daughter, IN TRUST for such one or more, exclusively of the others or other, of the children of such daughter, in such manner and form as such daughter, whether covert or sole, shall, by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil, appoint.

And in default of appointment, in equal shares.

AND in default of such appointment, and so far as no such appointment shall extend, IN TRUST for all the children or any the child of such daughter, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry, if more than one in equal shares.

Hotchpot clause.

PROVIDED always, that no child of any of my said daughters, taking any part of the said premises under any such appointment as aforesaid, shall be entitled to any share of that

part of the premises of which no such appointment shall be made, without bringing his or her appointed share into hotchpot. AND if there shall be no child of such my daughter, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, after the death of such my daughter, and such failure of issue as aforesaid, the share of such my daughter, and the interest thereof, shall be held upon such trusts and in such manner as such my daughter, whether covert or sole, shall by deed, with or without power of revocation and new appointment, or by will or codicil, appoint; And in default of such appointment, and so far as no such appointment shall extend, as well the original share of such my daughter, as any other share which may accrue to her under this present provision, and the interest thereof, shall accrue to my other child or children, if more than one in equal shares. AND I hereby declare, that any portion or portions which shall accrue to any of my daughters, and the interest thereof, shall be held upon the like trusts, and with and subject to the like powers and provisoes, so far as circumstances will admit, as her original share and the interest thereof (c). PROVIDED always, and

In default of issue, upon such trusts as each such daughter shall appoint.

In default of such appointment, in trust for testator's other children, equally.

Power for

(c) The trusts declared in the text, as to the shares of daughters, are not uncommonly inserted in wills of this description, and appear well calculated to provide for the interests of a daughter in case of an imprudent marriage. The fortune of a lady is so generally settled upon trusts

daughters to appoint the interest of their shares to husbands for life.

I hereby declare, that it shall be lawful for each of my said daughters, notwithstanding coverture, to appoint by will or codicil that all or any part of the interest of her share, whether original or accruing, in the said trust premises, shall be paid to her husband during his life, or for any less period (*d*).

Power for daughters on marriage to vary the trusts hereby declared concerning their portions, and to settle the same to other uses.

PROVIDED always, and I hereby declare, that it shall be lawful for my said trustees or trustee, during the life of each of my said daughters, either before or after the marriage of such daughters, but so that the same be in contemplation or consideration of such marriage, with the consent in writing of such daughter, by any deed or deeds, to alter all or any of the trusts, powers, and provisions hereby declared of the share, whether original or accruing, of such daughter in the said trust premises, either by au-

resembling those in the text, that the provisions above contained ought rather to be regarded as a safeguard against the consequences of haste or indiscretion, than as a diminution of the interest of the daughters in their respective shares. The two next provisions in the text amply provide for any difficulty that might arise from the strict manner in which these shares are settled by the preceding clauses.

(*d*) This proviso is so reasonable, and in every way desirable, that it ought on no account to be omitted in a devise settling the fortune of a lady. A life-interest in his wife's fortune, after her death, is almost invariably secured to the husband by the marriage settlement; and the general object of the trusts and powers above declared appears so reasonable, that it is conceived that their insertion may, in most cases, be prudently recommended.

thorising such share or any part thereof to be lent on the bond or other personal security of the husband or intended husband of such daughter, or on any other security; or by declaring trusts and provisions concerning such share, and the interest thereof, or any part thereof respectively, for the benefit of her children or child or any such children, different from the trusts hereby declared concerning the same; or by giving such husband or intended husband the first life-interest in such share or any part thereof; or by vesting such share and interest, or any part thereof, in such daughter, or such husband or intended husband, freed from all trusts; or by declaring such other trusts of such share and interest, or any part thereof, as the said trustees or trustee, with such consent as aforesaid, may think fit (*e*). AND I hereby declare, that my said trustees or trustee shall not be answerable, in any court of equity

Trustees not to be accountable in any Court

(*e*) This power being not unfrequently inserted in wills containing the preceding trusts and powers relating to devises in favour of females, it has not been thought proper to omit it in this work; but it will, in every case, be a matter for the serious consideration of the testator, whether it be expedient, under any circumstances, to place it in the power of a lady, previous to her marriage, to deprive herself and her family of the protection afforded by the preceding clauses; the cases in which the intended husband is most likely to desire a departure from the trusts of the will, are of course precisely those in which it will generally be most desirable to adhere strictly to such trusts.

for the exercise or non-exercise of the above power.

or otherwise, for the exercise or non-exercise of the power lastly hereinbefore contained, or as to the manner of the exercise thereof; but that the said trustees or trustee shall have an absolute discretion as to the same, such consent as aforesaid being obtained as to the exercise thereof (*f*). (*Advancement, maintenance, and accumulation clauses, see supra, pp.* 193, 194). AND I hereby declare, that my said trustees or trustee shall either forthwith sell and convert into money my said residuary real and personal estate or any part thereof, or defer such sale and conversion at their or his absolute discretion, without being responsible for any loss to be occasioned thereby.

Power to trustees to defer the sale of the testator's property.

AND I hereby declare, that it shall be lawful for my said trustees or trustee, at any time after my death, with the consent in writing of all my children then living and of age, and as to such of my daughters then living and of age whether covert or sole, instead of selling any part of my property, to appropriate such part in or towards satisfaction of any legacy or share hereby given to or in favour of any of my children; And every such appropriation shall take effect from such

Power to trustees, with the consent of children who shall have attained twenty-one, to allot any part of testator's property.

(*f*) Whenever any important discretion is reposed in trustees, as in the preceding clauses, particular care should be taken in the selection of the persons in whom the testator proposes to repose such confidence; and it should always be ascertained that they are willing to accept the execution of the trusts reposed in them.

period, and shall be in respect of such sum, and in such manner, as my said trustees or trustee, with such consent as aforesaid, shall think proper; And such property so to be appropriated shall be held by the said trustees or trustee upon the like trusts and with the like powers as are hereinbefore declared with respect to the several stocks, funds, or securities, in or upon which the legacy or share in respect of which such appropriation shall have been made, might have been invested under the trusts hereby declared (*g*). AND I hereby direct, that, until a sale of my said residuary property, my said trustees or trustee shall apply the rents and profits of the property, so remaining unsold, in the manner in which the interest of the money to be produced by a sale thereof would be applicable, if the same were then sold. AND I hereby appoint my said wife and the said M. N. and O. P. guardians of my said daughter G. H., during her minority. AND I hereby declare, that my executors or executor may, at their or his discretion, either carry on any trade or business which I have bound my executors to continue for the full period agreed upon or any less period, or may discontinue such

Direction to trustees to apply produce of testator's property, till a sale, in the same manner as the interest of the money arising from a sale would be applicable.

Appointment of guardians of infant daughter.

Executors may agree with partners to wind up any business which according to articles should be carried on;

(*g*) This clause will often be found useful in wills of this nature; if it be not inserted, no secure arrangement could be made for allotting any part of the testator's property to any of his children, however desirable or beneficial such arrangement might be.

trade or business with the consent of the partner or partners engaged therein. AND I direct my said executors and executor, if and when any such business shall be discontinued, to wind up or dispose of the same upon such terms as are provided in the articles of partnership or agreements between me and my partners, or upon such terms as my executors or executor and the partner or partners therein shall agree upon. AND I direct my executors or executor, at their or his discretion, either to wind up or dispose of, or to continue either alone or in conjunction with any person or persons, any business in which I may be engaged at my death, and which I may not have bound my executors to continue: PROVIDED always, that no such business as last aforesaid shall be carried on, except with the consent in writing of all my children who shall have attained twenty-one, (such consent, as to each such daughter, to be effective whether covert or sole). AND I hereby declare, that it shall be lawful for my said executors and executor, at their or his discretion, to apply the capital employed in any business which they may continue to carry on in carrying on such business, and, with such consent of my children as last aforesaid, to employ in such business any money part of my general estate, all such capital and money so employed to bear interest at 5*l.* per cent. per annum, payable half-yearly. AND I hereby declare that all profits arising from such business above the said interest of 5*l.* per cent. shall form part of the

and make all arrangements they think fit for closing such business.

Executors, at their discretion, either to close, or with certain consents to carry on, any business the testator may not be bound to carry on;

and to employ capital already therein, and fresh capital from the general estate, paying interest for the same.

All profits to form part of general residue.

capital of my residuary estate; And my share in all losses to be incurred in such business shall be paid out of the said capital of my residuary estate.

All losses to be paid out of the same.

AND I hereby declare that it shall be lawful for the said trustees or trustee to employ such persons in winding up, disposing of, or carrying on any such business, at such wages or salaries as they or he shall think fit (*h*). (*Devise of mortgage estates, supra, p.* 194.—*Appointment of executors, with power to arrange and compromise, supra, p.* 194.—*Trustee clauses, supra, pp.* 195, 196, 197). IN WITNESS &c.

Power to trustees to employ clerks, &c.

Devise of mortgage estates.

Appointment of executors, with power to arrange and compromise.

(*h*) The preceding clauses, relative to the carrying on or winding up of any business in which the testator may be engaged, are of extreme importance. If they be omitted, the executors have no option as to carrying on the business, however inexpedient it may appear to be to wind it up immediately on the testator's death; and in very many instances they would for their own protection be compelled to place the whole of the affairs of the testator under the direction of the Court of Chancery.

No. IX.

CODICIL *appointing a new Trustee, and devising and bequeathing Leaseholds for Lives and Years to Trustees, upon Trust to pay Rents and renew Leases; and, subject thereto, upon Trusts corresponding with the Uses of Fee-simple Estates devised by the Testator's Will.*

Appointment of new trustee and executor.

I, A. B., of &c., DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——. WHEREAS C. D., in my said will named, has lately died: Now I appoint E. F., of &c., to be a trustee and executor of my said will in the place of the said C. D. AND I declare that my said will shall accordingly be read and construed as if the name of the said E. F. had been therein inserted throughout, instead of the name of the said C. D. (*a*).

Devise and bequest of leaseholds for lives and years.

I DEVISE AND BEQUEATH all my leaseholds, whether held for lives or years, unto the said E. F. and L. M., of &c., their heirs, executors, and administrators, according to the na-

(*a*) The appointment of a new trustee is one of those alterations which may be judiciously made by a codicil. Great care should be taken that the appointment be so made as to endow the new trustee with all the powers and estates which by the will were intended to be entrusted to and vested in the deceased trustee.

ture thereof, at and under the rents, covenants, conditions, and agreements in the several leases thereof reserved and contained, and on the part of the lessee to be paid, observed, and performed, UPON TRUST that the said E. F. and L. M., or the survivor of them, or the heirs, executors, or administrators of such survivor, hereinafter called the trustees or trustee, shall endeavour to obtain renewals or a renewal of such leases, or any of them, as shall be usually renewable in the usual course of renewal of such leases, and shall for that purpose surrender any existing lease or leases, and shall raise the fines and other expenses of every such renewal out of the rents and profits of the same premises, or by mortgage thereof.

upon trust to renew leases;

AND I hereby declare that, subject to the trusts aforesaid, the said trustees or trustee shall stand possessed of the same leasehold premises, upon such trusts, and with, under, and subject to such powers, provisoes, and declarations, as shall as nearly correspond to the uses, trusts, powers, provisoes, and declarations by my said will declared of the freehold estates thereby devised, as the different tenures of the property and the rules of law and equity will admit; yet so that the said leasehold estates shall not vest in any person, by my said will made tenant in tail or in tail male by purchase of the freehold estates thereby devised, unless such person shall attain the age of twenty-one years, or shall leave issue capable of taking under the devise to such person so dying in my said will contained. AND in all other respects I confirm my said will. IN WITNESS &c.

and subject thereto, upon trusts corresponding with the uses of the freeholds devised by the testator's will.

No. X.

WILL *of* REAL ESTATE.—*Devise to Trustees for a Term of* 1000 *Years, and, subject thereto, to Testator's Sons and Daughters in strict Settlement.—Appointment of Portions to Children under a Power in a Settlement.—Trusts of Term of* 1000 *Years to raise Money to pay Debts and Legacies.—Trust to permit Testator's Wife, during Widowhood, to reside in Mansion-house*

THIS IS THE LAST WILL of me, A. B., of &c. I DEVISE all my real estates, except what I otherwise devise, and except estates vested in me as trustee or mortgagee, to the use of C. D., of &c., and E. F., of &c., their executors, administrators, and assigns, for 1000 years, without impeachment of waste, upon the trusts hereinafter declared concerning the same (*a*); And after the

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(*a*) If there be any sum of money which the testator desires to have raised out of his real estate, the most effectual and easiest manner of accomplishing that end is by limiting a term of years to trustees for that purpose. For all purposes of raising money a long term of years is as valuable as the fee-simple. A charge of debts and legacies, if no estate be limited to trustees for the purpose of raising money to pay them, may frequently render necessary a suit in Chancery.

expiration or sooner determination of the said term, and in the mean time subject thereto and to the trusts thereof, to the use of each successively according to seniority of my sons, for the life of such son, without impeachment of waste; And immediately after the decease of each such son, to the use of his first and other sons according to seniority in tail male, With remainder to the use of the first and other daughters successively, according to their respective seniorities, of each of my said sons in tail, the daughters of the elder of my said sons to be preferred to and take before the daughters of the younger of my said sons; With remainder to the use of each of my daughters successively according to seniority during her life, without impeachment of waste; And immediately after her death to the use of her first and other sons successively, according to their respective seniorities, in tail; With remainder to the use of the first and other daughters successively, according to their respective seniorities, of each of my said daughters in tail, the daughters of the elder of my said daughters to be preferred to and take before the daughters of the younger of my said daughters; With remainder to the use of my own right heirs for ever. AND in exercise of a power to me given by an indenture of settlement dated the —— day of ——, and made between [*parties*], and of every other power enabling me in this behalf, I HEREBY appoint, that the sum of £—— raisable under the trusts of the same indenture of settlement shall be for

and subject thereto and to the trusts thereof, to the use of the testator's first and other sons for life, with remainder to their first and other sons successively in tail male;

remainder to the first and other daughters of testator's sons successively in tail;

remainder to testator's daughters successively for life;

remainder to her first and other sons successively in tail male;

remainder to the first and other daughters of testator's daughters successively in tail;

with remainder to testator's own right heirs.

Appointment of portions to children in pursuance of

power in a settlement.

all my children or any my child, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry, if more than one, in equal shares. (*Advancement, maintenance, and accumulation clauses, supra, pp.* 193, 194 (*b*)). AND I hereby declare that the said C. D. and E. F., and the survivor of them, and the executors and administrators of such survivor, (hereinafter called the trustees or trustee), shall hold the premises devised to them for the said term of 1000 years, UPON TRUST, that the said trustees or trustee shall, by sale or mortgage of the same premises or any part thereof, for all or any part of the same term, or out of the rents and profits of the same premises, or by any other reasonable ways and means, raise such sum of money as shall be required, in aid of my personal estate, for payment of my debts, legacies, funeral and testamentary expenses (*c*); AND do and shall, but sub-

Advancement, maintenance, and accumulation clauses.

Trusts of term of 1000 years to raise money to pay debts and legacies.

Trust to per-

(*b*) The 10th section of the Wills Act prevents the necessity of observing any formalities that may be required by the instrument conferring the power of appointment, and so prevents many appointments from failing to take effect. Great care should, however, be taken that the appointment be in all respects authorised by the power; and the instrument conferring the power should, if possible, be always referred to, to see that such is the case. But see observations in the Introduction as to the case of *West* v. *Ray*.

(*c*) The fact of money being directed to be raised for the payment of the testator's debts renders it unnecessary

ject and without prejudice to any sale or mortgage by virtue of the trust lastly hereinbefore contained, permit my wife, so long as she shall continue my widow, during the minority of any person who for the time being under this my will shall be tenant for life, or tenant in tail male, or in tail, by purchase of my said real estates in remainder immediately expectant on the said term of 1000 years, to reside in and occupy my mansion-house called ——, with the out-houses, offices, and demesne to the same belonging, she keeping and maintaining the same in good and tenantable repair (*d*). (*Trusts during minority of devisees, infra, p.* 249.—*Powers of jointuring and charging portions; powers of leasing; and powers of sale and exchange, pp.* 250, 251, 253, 254.—*Devise of mortgage estates, supra, p.* 194.—*Appointment of guardians and executors, supra, p.* 194.—*Trustee clauses, supra, pp.* 195, 196, 197.) IN WITNESS &c.

mit testator's wife, during widowhood, to reside in mansion-house.

to declare, that the receipts of the trustees shall be a sufficient discharge for any money they may raise. If the direction were only to raise money for the payment of legacies, any person lending money for such a purpose would, in the absence of an express declaration to the contrary, be bound to see to the application of the money so lent.

(*d*) This trust is most frequently confined to the minority of an eldest son.

No. XI.

CODICIL *suspending Payment of Legacies given by Testator's Will.—Revocation of Trusts of Premises in ——, and Gift of the same to Testator's Wife for her Life.—Declaration that Portions advanced to Daughters, and Bequests in Favour of Testator's Wife and Children, are in Satisfaction of their Claims under his Marriage Settlement.—Direction that Legacies shall be paid free from Legacy Duty.*

Recites probable injury to residuary legatee by paying legacies given by will as they become due.

I, A. B., of &c., DO DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——. WHEREAS, by reason of the fluctuating value of the investments in which a considerable part of my property is invested, it might be detrimental to the person or persons entitled to my residuary estate, to be compelled to pay as they become due the legacies given by my said will to C. D., E. F., and G. H., respectively: Now I hereby direct, that, during —— years from my death, unless the market price of —— stock shall at some one time be at —— or upwards, my executors or administrators shall not, without the consent of L. M., [*residuary legatee*], his executors or admi-

Direction that during —— years from testator's death, unless the market price of —— stock be at —— or upwards, his executors or

nistrators, pay the sums of £——, £——, and £——, respectively bequeathed to the said C. D., E. F., and G. H., by my said will: And that, during such suspense of payment, every legacy, the payment of which shall be so suspended, shall bear interest at the rate of £— per cent. per annum, payable half-yearly; But, nevertheless, my will is, that, for the purposes of transmission and vesting, the rights of the parties to the legacies, the payment of which shall be suspended, shall remain as they did under my will (*a*). I REVOKE the trusts in my said will contained, of my house in ——, with the appurtenances, and I devise the same to my wife for her life, and after her death I devise the same to M. N., of &c., his heirs and assigns. AND I hereby declare, that every portion advanced by me on the marriage of any of my daughters was given by me in satisfaction of the portion to which every such daughter would have been entitled under my marriage settlement; and that the devises and bequests in my said will, and in this my codicil contained, to or in trust for my said wife or any

administrators shall not pay certain legacies without consent of residuary legatee,

that during such suspense of payment the sums remaining unpaid shall bear interest.

Revocation of trusts of premises in ——.

Declaration that portions advanced to daughters were in satisfaction of the portions they would have become entitled to under testator's marriage settlement.

Declaration

(*a*) The general rule is, as before stated, that legatees are entitled to their legacies at the end of one year from the death of the testator; and in the absence of some such provision as the above, the executors would be of course compelled to sell sufficient of the property charged with the legacies whatever might be the depreciation in value of such property. The above clause may be of advantage when a large part of the testator's property consists of securities liable to great variations in value.

that devises and bequests in the said will or this codicil in favour of testator's wife and children, are in satisfaction of their claims under his said marriage settlement.

of my children, and for their respective issue, are upon condition that they respectively make no claim on my estate under the said settlement, or on any other pretence whatsoever, and upon condition that, if required by my executors, they respectively execute releases of their respective claims under the said settlement. AND I hereby declare, that if any of my said daughters, or their respective husbands or issue, shall bring any action or suit, or make any claim under the said settlement, or if, within three calendar months after request made to them by my executors as aforesaid, they refuse or neglect to execute such release as aforesaid, then the bequests in my said will made to or in favour of the person who or whose husband or children shall so refuse or neglect as aforesaid, shall absolutely cease and be void(*b*). AND I direct, that all legacies given by my said will, or any codicil thereto, shall be free from legacy duty. And in all other respects I ratify and confirm my said will. IN WITNESS &c.

Declaration that if any of the testator's daughters, or their husbands or issue, shall make any claim under the testator's settlement, or refuse to release such claim, then the bequest in favour of such person to be void.

Direction that legacies shall be paid free from duty.

(*b*) In all cases where the testator has any power of appointment by will among his children, it is on many accounts desirable that his will or codicil should unequivocally shew whether such powers are intended to be thereby exercised, and to what extent (if any). If any devise or bequest be intended to be made in lieu of any benefit which the devisee or legatee may otherwise derive, either under or in default of any appointment by the testator, care should be taken that such intention be unequivocally shewn by the will.

No. XII.

WILL *of* REAL ESTATE.—*Devise of Real Estates to Trustees for a Term of* 1000 *Years, and, subject thereto, to the Use that Testator's Wife might receive an Annual Rent-charge, with Powers of Distress and Entry for securing the same; and to the Use that L. M. might receive an annual Rent-charge, with like Powers for securing the same; and, so subject, to the Use of I. K. and his Issue in strict Settlement.—Trusts of Term of* 1000 *Years to raise Money for Payment of Testator's Debts, Legacies, Funeral and Testamentary Expenses, and the Rent-charges given by his Will.—Trusts during the Minorities of Devisees.—Power of jointuring and of limiting Terms of Years to secure Jointures.—Power of charging Portions for younger Children, and of limiting Terms of Years to secure Portions.—Powers of Leasing.—Powers of Sale and Exchange.—(Usual Powers)* (*a*).

Devise of real estates to trustees for 1000 years;

THIS IS THE LAST WILL of me, A. B., of &c. I DEVISE all my real estates, except what I other-

(*a*) This is a Precedent of a will in a case where the

wise devise, and except estates vested in me by way of mortgage, unto C. D., of &c., and E. F., of &c., their heirs and assigns, to the use of M. N., of &c., and O. P., of &c., their executors and administrators, for 1000 years; and after the expiration thereof, and in the meantime subject thereto, to the use that my dear wife, G. H., and her assigns, may receive during her life for her jointure, and in bar of dower or freebench, a yearly rent-charge of £——, to be charged and payable out of my said real estates, to be paid by half-yearly payments, on the —— day of ——, and the —— day of ——, in every year, without deduction, the first payment to be made on the first of such days of payment as shall happen after my death, and to the use, that, if the said rent-charge, or any part thereof, shall at any time be unpaid for twenty-one days after any of the times hereinbefore appointed for payment thereof, it shall be lawful for my said wife and her assigns to enter into and distrain upon the premises hereinbefore charged therewith, or any part thereof, and to dispose according to law of the distress or distresses then and their found, to the intent, that thereby or otherwise the said yearly rent-charge of £——, and every part thereof so unpaid, and all expenses incurred by

and subject thereto to the use that testator's wife might receive an annual rent-charge,

with powers of distress and entry;

personal estate of the testator will be all consumed in payment of debts, &c. The next Precedent provides for the investment of personalty in the purchase of real estate.

the nonpayment thereof, shall be fully paid; and to the further use, that, if the said yearly rent-charge of £——, or any part thereof, shall at any time be unpaid for forty days next after any of the times hereby appointed for payment thereof, then (although there shall not have been any legal demand made thereof) it shall be lawful for my said wife and her assigns to enter into and upon and to hold the said premises hereinbefore charged therewith, or any part thereof, and to take the rents and profits thereof until she and they shall be fully paid the same yearly rent-charge, and the arrears thereof due at the time of such entry, or afterwards to become due during her or their being in possession of the same premises, together with all expenses which she or they shall sustain by reason of the nonpayment thereof, and such possession, when taken, to be without impeachment of waste (*b*); And to this further use, that my servant L. M. and his assigns shall, during his life, receive an annual sum or yearly rent-charge of £——, to be charged upon and payable out of the same premises, to be paid quarterly, on the —— day of ——, the —— day of ——, the —— day of ——, and

and to the use that L. M. might receive an annual rent-charge.

(*b*) The powers of distress and entry are very generally inserted in wills granting rent-charges, as they are in marriage settlements and other deeds by which rent-charges are made payable. In practice it is found that the position of the person entitled to a rent-charge so secured is such that it is hardly ever necessary to have recourse to these powers.

the —— day of ——, in every year, the first quarterly payment to be made on the first day of payment after my death, with the like powers of distress and entry, for compelling payment thereof, as are hereinbefore given to the said G. H. and her assigns, for securing payment of the said annuity of £——; And so subject as aforesaid to the use of I. K., of &c., and his assigns, for his life, With remainder to the use of each successively, according to seniority of the sons of the said I. K. born in my lifetime, for the life of such son, without impeachment of waste, and immediately after his decease to the use of his first and other sons according to seniority in tail male, With remainder to the use of the first and other sons of the said I. K. born after my death, successively, according to their respective seniorities, in tail, With remainder to the use of my own right heirs. AND I hereby declare, that the said M. N. and O. P., and the survivor of them, and the executors and administrators of such survivor, shall hold all the said premises devised to them for the said term of 1000 years, UPON TRUST that they or he do by sale or mortgage of the premises comprised in the same term, or any part thereof, for all or any part of the same term, or out of the rents and profits of the same premises, or by any other reasonable ways and means, raise such sum or sums of money as they or he shall think expedient for the payment of my debts, funeral and testamentary expenses, and legacies, including the said rent-charges of

with like powers of distress and entry;

and so subject to the use of I. K. and his issue in strict settlement;

with remainder to testator's own right heirs.

Trusts of term of 1000 years to raise money for payment of funeral and testamentary expenses, debts, legacies, and rent-charges.

£—— and £——, and shall apply the money so to be raised in payment of my said debts, funeral and testamentary expenses, legacies, and rent-charges. AND I declare, that every receipt of the said M. N. and O. P., or of the survivor of them, or the executors or administrators of such survivor, for any money payable to them or him under the trusts aforesaid, shall be an effectual discharge to every person to whom the same shall be given; and that no person taking such receipt shall be answerable for the misapplication or non-application of the money therein expressed to be received, or shall be bound to see to the application thereof. AND I hereby declare, that if any person who would, if this present declaration had not been inserted, be entitled to the possession or the receipt of the rents and profits of my said real estate as tenant for life, or tenant in tail or in tail male by purchase, shall be under the age of twenty-one years, then and so often the said C. D. and E. F. [*trustees*], and the survivor of them, and the executors or administrators of such survivor, (hereinafter called the trustees or trustee), shall, during such minority, receive the rents and profits of and manage the said real estate, with power to fell timber for repairs or sale, or otherwise, and to preserve game, and accept surrenders from, and make allowances to, and arrangements with tenants and others, and with all other powers expedient for the due management thereof; and, after deducting the expenses of management, repairs, insurance, and other out-goings, and satis-

Trustees receipt clause

Trusts during the minorities of devisees

fying any and every annual sum, and the interest of any and every gross sum, which may be charged upon the said real estate or any part thereof, shall pay such sum as the said last-mentioned trustees or trustee shall think proper, for or towards the maintenance or education of such minor (either directly, or to his guardians or guardian, to be applied by such guardians or guardian without accounting to the said trustees or trustee); and shall accumulate the residue of the said rents and profits in the way of compound interest, by investing the same, and all the resulting income thereof, in the names or name of the said trustees or trustee in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, with power to vary the same at their or his discretion; and shall hold all the said residue of the said rents and profits, and the stocks, funds, or securities in or upon which the same may be invested, and the annual income thereof, upon such trusts as the same would be held upon if the same were monies arising from sales under the power of sale hereinafter contained, or stocks, funds, or securities purchased therewith. AND I hereby declare, that every person hereby made tenant for life of the said real estate hereby devised, may, either before or after he shall be entitled to the possession, or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate and to all powers annexed to any such preceding estates, and to all estates limited in exercise of any such powers), by deed

Power of jointuring;

or deeds, or by will or codicil, appoint to any woman or women whom he may marry or have married, for her or their life or respective lives or any less period, a yearly rent-charge or yearly rent-charges not exceeding in the whole for any one woman the sum of £——, to be charged upon and payable out of all or any part of the said real estates, with the usual powers of distress and entry for recovering and enforcing payment of such rent-charge or rent-charges; and, subject as aforesaid, may also appoint the premises so charged to any person or persons for any term or terms of years, with or without impeachment of waste, to take effect immediately after the decease of the person for the time being exercising this power, upon the usual trusts for securing the payment of the same yearly rent-charge or rent-charges; PROVIDED, nevertheless, that no rent-charge shall become a lien upon or become payable out of all or any part of the said real estate, unless the person appointing the same shall be or become entitled to the possession or to the receipt of the rents and profits of the said real estate, or some issue of such person shall or would, if of full age, become so entitled; And also, that the said real estate shall not, at any one time, be subject to the payment of rent-charges exceeding in the whole the sum of £——, and that such rent-charges shall have priority of payment according to the priority in order of limitation of the estates of the several persons respectively exercising the said power. AND I hereby also

and of limiting terms of years to secure jointures

No jointure to become a lien unless the person limiting the same, or some of his issue, become entitled in possession.

The estates not to be subject to more than a specified annual sum at once for jointures.

Power of charging por-

tions for younger children;

declare, that every person hereby made tenant for life of the said real estate, may, either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate therein, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by any deed or deeds, or by will or codicil, charge all or any part of the said real estate with the payment, for the portion or portions of every or any child or children of such person (other than an eldest or an only son for the time being entitled to the possession or to the first estate of inheritance of the said real estete), of any sum or sums not exceeding the different sums hereinafter mentioned, (that is to say) if there shall be but one such child (other than as aforesaid) the sum of £——, if there shall be but two such children (other than as aforesaid) the sum of £——, if there shall be three or more such children (other than as aforesaid) the sum of £——, to be an interest vested or interests vested in and to be paid to such child, or among such children, or any one or more of them, in such proportions if more than one, at such time, and in such manner and form in every respect, as the person for the time being exercising this power shall appoint; And may by the same or any other deed or deeds, or by will or codicil, charge the premises intended to be charged with such portion or portions respectively, with the payment of any clear annual sum or sums not ex-

and with annual sums, by way of interest on the portions, for maintenance;

ceeding the interest of the portion or portions after the rate of £— per cent. per annum, to be applied for the maintenance or education of the child or children for whom such portion or portions shall become payable, in such manner as the person for the time being exercising this power shall direct; And may, to provide for the raising and payment of such portion or portions and annual sum or sums, by the same or any other deed or deeds, or by will or codicil, appoint the premises charged therewith to any person or persons, for any term or terms of years, with or without impeachment of waste, upon usual trusts for securing payment of the same. PROVIDED, nevertheless, that no portion or annual sum shall become a lien upon all or any part of the said real estate, or become payable, unless the person appointing the same shall be or become entitled to the possession, or to the receipt of the rents and profits of the said real estate, or some issue of such person shall or would, if of full age, become so entitled; And also, that the said real estate shall not at any one time be charged with a greater sum in the whole than the sum of £——; and that such portions respectively shall have priority of payment according to the priority in order of limitation of the respective estates of the several persons exercising the said power. AND I hereby declare, that every person hereby made tenant for life of the said real estate hereby devised, when he shall be in the actual possession or entitled to the receipt of the rents and profits

and to limit terms of years for raising the same

No portion to become a lien unless the person charging the same, or some of his issue, become entitled in possession.

The estate not to be subject to more than a specified sum at once for portions.

Power of leasing for twenty-one years.

thereof, and also the said trustees or trustee during the minority of any person who, if of full age, would be entitled to the possession or to the receipt of the rents and profits of the said real estate, may by deed or deeds appoint by way of demise, &c., (*supra, pp.* 200, 201). AND I hereby further declare, that the said trustees or trustee may, during the life of any person hereby made tenant for life, for the time being entitled to the possession or to the receipt of the rents and profits of the said real estate, with his consent in writing, and during the minority of any person who, if of full age, would be entitled to the possession or to the receipt of the rents and profits of the said real estate, at the discretion of the said trustees or trustee (but subject and without prejudice to any lease which may have been granted under the power in that behalf hereinbefore contained), dispose of, either by way of sale or in exchange for other hereditaments in England or Wales, all or any part of the said real estate, upon such terms, and under such conditions, as the said trustees or trustee shall think fit, with power to buy in or rescind any contract for sale or exchange of all or any of the said premises, and to re-sell or exchange the same, without being responsible for any loss which may be occasioned thereby, and with power upon any such exchange to give or receive any sum of money for equality of exchange, and with power for effectuating any such sale or exchange, to revoke all or any of the uses, trusts, or powers

Power of sale and exchange.

hereinbefore limited or to be limited under the powers of jointuring or charging portions hereinbefore contained, of the hereditaments sold or given in exchange, and to appoint the same in any manner they or he shall think fit. AND I declare, that the receipt of the said trustees or trustee for the purchase-money of the premises sold, or for any monies received for equality of exchange, shall effectually discharge the purchaser or purchasers or other person or persons paying the same therefrom, and from being concerned to see to the application thereof, or being answerable for any nonapplication or misapplication thereof. AND I hereby declare, that the said trustees or trustee shall, with such consent or at such discretion as aforesaid, lay out the money received upon any sale or for equality of exchange in the purchase of freehold or copyhold hereditaments of inheritance in England or Wales, and shall settle or cause the same to be settled to the uses and subject to the powers hereby limited or to be limited under the powers of jointuring and charging portions hereinbefore contained, as far as the deaths of parties and the different tenures of the property and other intervening circumstances will permit. PROVIDED always, that the said trustees or trustee may, with such consent or at such discretion as are hereinbefore mentioned with respect to a sale or exchange, apply any monies to be received upon any sale or for equality of exchange as aforesaid, or any part thereof, in or towards satisfying any mortgage or other charge or incumbrance which

Trustees' receipt clauses.

Monies arising under the power of sale and exchange to be laid out in the purchase of lands to be settled to the uses of the settlement.

Power for trustees to apply monies received on a sale or exchange in discharge of incumbrances;

may then affect all or any of the hereditaments which shall then be subject to the uses or trusts of this my will; AND I declare, that, until the money to be received upon any sale or for equality of exchange shall be laid out or applied as aforesaid, the said trustees or trustee may, with such consent or at such discretion as aforesaid, invest the same in their or his names or name in any of the public funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, and may alter, vary, or transpose the same into or for other stocks, funds, or securities of the same or like nature, as they or he shall think fit; and that the annual income from such stocks, funds, or securities, shall be paid and applied to such person or persons in all respects, and in such manner, as the rents and profits of the hereditaments to be purchased therewith would be payable or applicable in case such purchase and settlement as aforesaid were then actually made (e). (*Devise of mortgage estates, supra, p.* 193; *Trustee clauses, pp.* 194, 195, 196. *Appointment of Executors, p.* 194. IN WITNESS &c.

and till a purchase, to be invested in the funds or upon securities.

(e) In all wills settling real estate a power of sale and exchange ought to be inserted. If omitted, there is no way of remedying the defect except by a private Act of Parliament, the expense of which is so great as often to deter the tenant for life from applying for it; and such Act will not be granted, if from the will there appear grounds for believing that the testator purposely omitted such powers; and the fact of the testator having in his will given other powers will be considered to shew that the powers of sale and exchange were intentionally omitted.

No. XIII.

WILL *of* REAL *and* PERSONAL ESTATE.—*Bequest of Personalty to Trustees, Upon Trust for Sale and Conversion into Money.—To pay Funeral and Testamentary Expenses and Legacies, and to invest the Residue in the Purchase of Real Estates, to be settled to the Uses of Testator's Real Estate.—Direction as to Investment of Residue in the meantime.—Devise of Real Estate to the Use of Testator's Wife for Life or Widowhood; With Remainder to Testator's Cousin for Life, with Remainder to his First and other Sons in Tail Male: With Remainder to the Use of his Daughters for Life, as Tenants in Common, with Remainder to the first and other Sons of such Daughters in Tail Male; With Cross Remainders, with Remainder to M. N. in Fee.—Appointment of Executors.—(Usual Clauses).—Declaration that a Trustee who is a Solicitor may make his usual Professional Charges.*

General bequest of personalty.

THIS IS THE LAST WILL of me, A. B., of &c. I BEQUEATH all my personal estate, including all my chattels real, (except what I otherwise be-

queath by this my will), unto C. D., of &c., and E. F., of &c., their executors and administrators, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, hereinafter called the trustees or trustee, shall, as soon as conveniently may be after my death, sell, call in, and convert into money, such part of my said personal estate as shall not consist of money. AND I declare, that the said trustees or trustee shall, by and out of the monies to arise from such sale, calling in, and conversion into money, and the money of which I shall be possessed at my death, pay my debts, funeral and testamentary expenses, and the legacies bequeathed by this my will or any codicil thereto; And shall invest the residue of the said monies in the purchase of freehold or copyhold estates in England or Wales, (but not in Ireland); And shall settle or cause to be settled the premises so to be purchased to the uses, upon the trusts, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared and contained of my real estates hereinafter devised, or such of them as shall be then subsisting undetermined and capable of taking effect. AND I declare, that, until such real estates shall be purchased as hereinbefore is directed, the said trustees or trustee shall invest the said residue of the said monies, or so much thereof as shall not have been invested in pursuance of the direction hereinbefore contained, in their or his names or name, in any of the public stocks or funds of

In trust for sale and conversion into money.

Declaration of the trusts of the money produced by the said personal estate;

to pay debts, funeral and testamentary expenses, and legacies;

and to invest the residue in the purchase of real estates to be settled to the uses of testator's real estates.

Direction to invest the said residue till a purchase of real estates;

Great Britain, or upon Government or real securities in England or Wales, (but not in Ireland), (or in or upon the securities of any company in Great Britain or Ireland incorporated by Act of Parliament or royal charter, and paying a dividend), with power for the said trustees or trustee to vary the said stocks, funds, and securities, at their or his discretion. AND I declare, that the said trustees or trustee shall hold all the said stocks, funds, and securities, upon such trusts, and with and under such powers, provisoes, and declarations, as shall as nearly correspond with the uses, trusts, powers, provisoes, and declarations hereinafter declared and contained of my real estates hereinafter devised, as the different natures of the property and the rules of law and equity will admit; but so, nevertheless, that the same shall not vest absolutely in any person hereinafter made tenant in tail or in tail male by purchase, who shall not attain the age of twenty-one years (*a*). AND I hereby devise all my real estates, except estates vested in me upon any trust or by way of mortgage, to the use of

with power to vary the investments

Trusts of the said investments to correspond with the uses of testator's real estate.

Devise of real estates to the use of

(*a*) If the proviso as to the nonvesting of the personalty in any tenant in tail or in tail male not attaining twenty-one years, were omitted, there would be considerable risk of the design of the testator being defeated: as, upon the death of such infant, the real estates to which he was entitled under this will would follow the limitations thereby declared, while the personalty would have become the absolute property of the infant, and would pass accordingly to his administrator.

testator's wife for life or widowhood; with remainder to the use of testator's cousin for life; with remainder to his first and other sons in tail male; with remainder to the use of his daughters for life as tenants in common; with remainder to their first and other sons in tail male, with cross remainders. with remainder to M. N. in fee.

my dear wife G. H. and her assigns during her life or so long as she may remain my widow; And after her death or marriage, to the use of my first cousin I. K., of &c., for his life, without impeachment of waste, with remainder to the use of the first and other sons of the said I. K. successively, according to seniority, in tail male, the elder of the said sons and his first and other sons being always to be preferred to and take before the younger of such sons and his first and other sons; And in default of such issue, to the use of all the daughters or any the daughter of the said I. K. during the lives or life of such daughters or daughter, if more than one in equal shares, without impeachment of waste; and after the death of each such daughter, then as to her share in the same premises to the use of the first and other sons of such daughter successively, according to their respective seniorities, in tail male; and in default of issue male of any such daughter, then I devise as well the original share of such daughter, as any share or shares accruing under this present proviso, to the use of the others or other of the said daughters of the said I. K. during their respective lives, if more than one as tenants in common; and, after the death of each such daughter, then as to her said respective accruing share in the same premises, to the use of her first and other sons successively, according to their respective seniorities, in tail male; And after the death of every such daughter and such failure of issue male as aforesaid, to the

use of M. N., of &c., his heirs and assigns for ever. AND I appoint the said C. D. and E. F. to be executors of this my will. (*Power for executors to arrange and compromise, supra, p.* 195; *Trustee clauses, supra, pp.* 194, 195, 196). AND I declare, that the said C. D. shall be entitled to charge for all professional business done by him in relation to the trusts hereof, in the same manner as he might have done if he had not been made an executor and trustee of this my will (*b*). IN WITNESS &c.

Appointment of executors; with power to arrange and compromise.

Trustee clauses.

Declaration that trustee may make usual professional charges for business done by him.

(*b*) In all cases where the testator is desirous of appointing a solicitor to be one of his executors or trustees, this clause should be inserted: as otherwise the executor or trustee would not be permitted, under any circumstances, to make any charge for services rendered by him in relation to the trust estate.

No. XIV.

WILL *of* REAL *and* PERSONAL PROPERTY. *—Confirmation of an Annuity formerly granted by the Testator.—General Devise and Bequest of Real and Personal Property, in Trust for Sale and Conversion into Money to be applied in discharge of Debts, &c., and in providing a Fund for Payment of the said Annuity, and a House for the Testator's Wife.—Gift of Legacies to Children to vest on Legatees attaining twenty-one, with Proviso for Accumulation.—Declaration that Legacies failing to vest should fall into the Residue.—Trusts of Residue for Children in certain Events.—Accumulation Clause.—Power of Leasing.—Power to permit Funds to remain in their actual State of Investment.—Appointment of Guardians and of Executors.—Legacies to Executors.—(Usual Clauses).*

THIS IS THE LAST WILL of me, A. B., of &c. WHEREAS, by an indenture dated on or about the —— day of ——, and expressed to be made between &c., I granted to X. Y., of &c., an an-

nuity of £—— per annum, during the life of the said X. Y.: Now I do hereby confirm the said grant of the said annuity, and all powers for securing the same, but upon condition that the said X. Y. shall accept the security hereinafter intended to be made for the said annuity; and shall, when required so to do by the trustees or trustee for the time being of this my will, release from the said annuity all or any part of my estate, except the property hereinafter provided as a security for the said annuity. I GIVE to my dear wife the sum of £——, to be paid to her within one calendar month from my death. I DEVISE and BEQUEATH all my real and personal estate whatsoever unto C. D., of &c., and E. F., of &c., their heirs, executors, and administrators, according to the nature thereof, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the heirs, executors, or administrators of such survivor, hereinafter called the trustees or trustee, shall with all convenient speed sell my said real estate, and sell, call in, and convert into money such part of my personal estate as shall not consist of ready money; and shall stand possessed of the monies to arise from such sale, calling in, and conversion into money, and of the ready money of which I shall be possessed at my death, UPON TRUST that they the said trustees or trustee shall out of the same pay my funeral and testamentary expenses, and debts, and the costs incurred about such sale, calling in, or conversion into money aforesaid, or in the execution of the

Confirmation of an annuity granted by the testator.

Bequest of legacy to testator's wife.

Devise and bequest of real and personal estate to trustees upon trust to sell, call in, and convert into money.

To pay debts, funeral and testamentary expenses, and immediate legacies;

trusts aforesaid, and the legacies bequeathed by this my will, or any codicil hereto; And shall out of the same trust-monies purchase, in their or his names or name, £3 per cent. Consolidated Bank Annuities to such an amount as shall be sufficient, by means of the dividends thereof, to pay the said annuity of £—— so granted to the said X. Y. as aforesaid; and to provide for the payment, during the life of my said wife, of the rent, rates, and taxes, and other outgoings (not exceeding in the whole the annual sum of £——), payable in respect of any house and premises which my said wife shall, from time to time, choose as a residence. AND I hereby direct, that the dividends of the £3 per cent. Bank Annuities, so to be purchased as last aforesaid, shall from time to time be paid and applied by the said trustees or trustee for the time being for the same purposes accordingly. AND I direct, that, until such investment as aforesaid, the said payments shall be satisfied, from time to time, out of the income of any part of my said residuary estate which shall be producing income, and in default thereof, out of the principal monies to come to the hands of the said trustees or trustee. AND I declare that, subject as aforesaid, the said trustees or trustee shall out of the aforesaid trust-monies pay the sum of £—— with interest for the same after the rate of £— per cent. per annum, to be computed from my decease, unto my eldest son G. H., if and when he shall attain twenty-one years; And the like sum

and purchase Bank Annuities to satisfy annuity,

and the rent and outgoings of a house for the testator's wife for her life.

Proviso that till investment the payments shall be made out of original income or out of the principal monies.

Gift of legacies with interest from testator's death to be paid to two sons on attaining 21.

Legacy to an

of £——, with like interest for the same, to my daughter M. N., if and when she shall attain twenty-one years or marry, whichever shall first happen; And the like sum of £——, with like interest for the same, to the persons to whom the same sum is payable under a covenant entered into by me by an indenture dated the —— day of ——, and made between [*parties*]; And that each of the said portions of £——, hereinbefore provided for the said G. H. and M. N., (if the same respectively shall not be absolutely vested at my death) shall be invested in the names or name of the said trustees or trustee in any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, with power for them or him to alter, vary, and transpose the same into or for other stocks, funds, or securities, of the same or a like nature, at their or his discretion; And that the annual produce of such last-mentioned trust premises shall, during the suspense of the absolute vesting of such portion, be accumulated by the said trustees or trustee in the way of compound interest, by the investment of the same and all the resulting produce thereof, upon any such securities as aforesaid, in the names or name of the said trustees or trustee, with such power of altering or varying securities as aforesaid, for the benefit of the child for whom the same portion is hereby provided. AND I declare, that, if either of them the said G. H. and M. B. shall die before the vesting of the portions

unmarried daughter on attaining 21 or marrying.

Legacy to the trustees of an unmarried daughter's settlement.

Proviso that the legacies not vested at the testator's death be laid out in the names of the trustees, and the income at their discretion applied;

or accumulated for their benefit.

Legacies not becoming vested to sink into the residue.

hereinbefore provided for them respectively, then the portion provided for him or her so dying, and the accumulations (if any) of the annual produce of the same, and the stocks, funds, or securities upon which the same shall have been invested, shall sink into the general residuary fund, the trusts whereof are hereinafter declared. AND I declare my will to be, that the said trustees or trustee shall hold the residue of the said trust-monies (subject to the payment thereout of the said legacies), if both my sons G. H. and I. K. shall attain twenty-one years, then, as to two-third shares thereof, IN TRUST for my said son G. H., his executors, administrators, and assigns; and as to the remaining one-third share thereof, IN TRUST for my said son I. K., his executors, administrators, and assigns; but if only one of my said sons G. H. and I. K. shall attain twenty-one years, IN TRUST for such one, who shall attain twenty-one years, his executors, administrators, and assigns; And if neither of my sons shall attain twenty-one years, and the said M. N. shall attain the age of twenty-one years or marry under that age, then IN TRUST for the said M. N., her executors, administrators, or assigns; and if neither of the said sons G. H. and I. K. shall attain twenty-one years, and the said M. N. shall not attain twenty-one years or marry under that age, then IN TRUST for O. P., of &c., her executors, administrators, and assigns(b). AND I declare, that, in case the trust

Trust of residue.

In trust for two sons if they attain twenty-one —as to two-thirds for one and one third for the other but if one die under 21, then the whole for the survivor if he attain 21.

If both die under 21, then in trust for the two daughters, if the unmarried one attain 21 or marry, —if not, the whole for the married daughter absolutely.

Trust to invest, and

(b) In the bequest in favour of M. N. it may perhaps be

monies, the trusts whereof are lastly hereinbefore declared, or any part thereof, shall not be absolutely vested on my death, then the whole or such part (as the case may be) as shall not be so vested of the same trust-monies, shall be invested in the names or name of the said trustees or trustee, in any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securites in England or Wales, with power for them or him, from time to time, to alter, vary, or transpose the same into or for other stocks, funds, or securities, of the same or a like nature; AND that during such suspense of absolute vesting, as last aforesaid, the annual produce of such last-mentioned trust premises, or a competent part thereof, shall be applied by such trustees or trustee, at their or his discretion, for the maintenance and education of any child for the time being entitled in expectancy thereto; And that the surplus (if any) of such annual produce shall be accumulated by the said trustees or trustee in the way of compound interest, by investing the same and the resulting income thereof upon any such stocks, funds, and securities, as last aforesaid, for the benefit of the persons or person who shall become entitled to the principal fund from which the same respectively shall have proceeded. AND I declare, that, until the said premises lastly hereinbefore devised shall be sold, it

vary securities.

Maintenance clause.

Accumulation clause.

Power of leasing for any term of years.

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advantageous to insert trusts settling the property in the event of her becoming entitled, see ante, pp. 228—230.

shall be lawful for the said trustees or trustee to let any of the same premises for any term or terms of years, at such rent or rents or conditions and in such manner in all respects as they or he shall think fit(c); And that in the meantime, until the said premises hereinbefore devised in trust for sale shall have been sold, the said trustees or trustee shall apply the rents and profits of the same premises so remaining unsold (after payment thereout of all outgoings which any other person shall not be liable to pay) in the manner in which the interest and annual produce of the monies to arise from such sale, or of the stocks, funds, and securities upon which the same monies are hereinbefore directed to be invested, would be applicable under the trusts herein contained, if the sale and investment aforesaid were actually made

Rents and profits, till a sale, to go as income of purchase-money.

AND I declare that it shall be lawful for the said trustees or trustee, during the life of my said wife and with her consent in writing, to allow any part of my personal estate to remain in the present state of investment, without being liable for any loss which may be occasioned by reason thereof. AND I declare, that the provision hereby made for my said wife shall be in bar of all dower, thirds, and free-bench, to which she may otherwise become entitled in or out of any lands or hereditaments of which I have been or am or shall be seised. (*Devise of mortgage estates, supra, p.* 194). AND I appoint the said C. D. and

Trustees, with consent of wife, may permit funds to remain in their actual state of investment at the testator's death.

Dower clause.

Devise of trust and mortgage estates;



(c) See power of leasing, p. 200.

E. F. to be thenceforth the guardians of my infant children during the residue of their respective minorities. And I appoint the said C. D. and E. F. executors of this will. And I bequeath to such of them as shall act in the execution of this my will the sum of £—— apiece (*d*). (*Power for the executors to arrange, compromise, and compound, supra, p.* 195; *Declaration that the receipt of the trustees and trustee for the time being shall be discharges, supra, p.* 195.) And I declare, that if the said trustees hereinbefore named, or either of them, or any trustee or trustees to be appointed as hereinafter is mentioned, shall die in my lifetime, or shall die or be desirous of being discharged, or decline or become incapable to act in the aforesaid trusts, before the same shall be fully executed, then it shall be lawful for the surviving or continuing trustee for the time being, (and for this purpose any retiring trustee willing to act in the exercise of this present power shall be considered a continuing trustee), or for the executors or administrators of the last surviving or continuing trustee, to appoint any other person or persons to be a trustee or trustees in the stead of the trustee or trustees so dying or being absent

Appointment of trustees to be guardians.

Appointment of executors.

Legacies to executors.

Usual clauses.

Power to appoint new trustees.

(*d*) If legacies be given to executors care, should be taken, as in the text, to mark whether the legacies be given to them qua executors or not. If a legacy be given to an executor, it is held that it is on his acting as such: Williams on Executors, pt. 3, b. 3, c. 2, s. 6; but by giving it as in the text, all questions are avoided.

from this kingdom, or desiring to be discharged, or becoming incapable to act as aforesaid: And that upon every such appointment the said trust premises shall be conveyed, so that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee, or solely, as the case may require; and every such new trustee shall, (either before or after the said trust premises shall have become vested as aforesaid), have the same powers as if he had been originally named a trustee in this my will.

Clauses for the indemnity of trustees and the payment of their expenses.

AND I declare, that the trustees or trustee for the time being of this my will shall be chargeable only &c. (*Trustees' indemnity clause; Power to reimburse themselves their expenses, p. 197.*) IN WITNESS &c.

No. XV.

WILL *of* REAL *and* PERSONAL ESTATE. *Gifts of Legacies.—Devise of Freehold Estates to the Use of Trustees during the Life of Testator's Niece for her separate Use, Remainder to her Sons and Daughters in Tail, Remainder to F. G. and his Sons and Daughters in Tail, Remainder to the Sons and Daughters of X. Y. in Tail, Remainder to Testator's right Heirs.—Name and Arms Clause.—Power to Female Tenant for Life to appoint Rent-charge to Husband. —Powers of jointuring and of charging Portions for Younger Children.—Trusts during Minority of Tenant for Life or in Tail.—Power of Leasing.—Power of Sale and Exchange.—Devise of Copyholds to Trustees, upon Trusts corresponding with the Uses of the Freeholds.—Bequest of Leaseholds to Trustees, upon Trusts corresponding with the Uses of the Freeholds.—Directions for Renewal of Renewable Copyholds and Leaseholds.—Bequest of Pictures, Plate, &c., as Heirlooms.—Directions as to safe Custody and Preservation of*

Heirlooms.—Bequest of Personal Estate, Upon Trust to convert the same into Money, and pay Debts, Legacies, &c., and to purchase Consols to satisfy Annuity.—Trusts of Residue of Personalty, the same as those declared of Money to arise from Sale of Real Estate.—(Usual Clauses.)

THIS IS THE LAST WILL of me, A. B., of &c.

Gift of a legacy;

I GIVE to —— of —— the sum of £——, to be paid to her at the expiration of twelve calendar months from my death, but without interest in the meantime.

—of an annuity for the separate use of a married woman.

I BEQUEATH an annuity of £—— to ——, the daughter of ——, during her life, for her separate use, independently of any husband with whom she may intermarry, and her receipts, whether covert or sole, to be sufficient discharges for the same.

Direction as to payment of annuities.

AND I direct that the said annuity of £—— shall be paid, clear of all deductions except legacy duty, by equal half-yearly payments, the first payment to be made at the end of six calendar months from my death (a).

General devise of freehold estates;

I DEVISE all my freehold estates

(a) The will should specify the time when the payment of an annuity given by it shall commence; if no time be mentioned, the annuity, like all other legacies, will not begin to be payable till twelve months from the testator's death; so that the first payment of an annuity, directed to be paid half-yearly, will not take place till eighteen months from the death of the testator. As annuities are a general mode of providing for persons without other means, this delay is seldom intended by the testator.

except what I otherwise devise and except estates vested in me as trustee or mortagagee, To the use of M. N., of &c., and O. P., of &c., and their heirs, during the life of my niece E. D., of &c., UPON TRUST to permit the said E. D. to receive the rents and profits thereof during her life for her separate use, independently of any husband with whom she may intermarry, and of his debts, interference, or engagements, and the receipts of the said E. D., whether covert or sole, shall be sufficient discharges for the same; And after the death of the said E. D., to the use of the first and every other son of the said E. D. successively, according to their respective seniorities, in tail; with remainder to the use of the first and every other daughter of the said E. D. successively, according to their respective seniorities, in tail; With remainder to the use of F. G. and his assigns during his life, without impeachment of waste; with remainder to the use of his first and every other son successively, according to their respective seniorities, in tail; with remainder to the use of the first and every other daughter of the said F. G. successively, according to their respective seniorities, in tail; With remainder to the use of the first and every other son of X. Y., of &c., deceased, successively, according to their respective seniorities, in tail; with remainder to the use of the first and every other daughter of the said X. Y., successively, according to their respective seniorities, in tail; With remainder to the use of my own right heirs, for

to the use of trustees during the life of testator's niece;

—and for her separate use;

remainder to her sons and daughters, successively, in tail;

—to another person for life;

to his sons, successively, in tail;

to his daughters, successively, in tail;

—to the sons of a deceased person, successively, in tail;

to the daughters of the same person, successively, in tail;

—to the testator's right heirs.

Proviso, that every person taking under the will and not bearing the name and arms of the testator, shall take and bear the same alone or in addition to his or her own surname and arms.

ever. AND I declare that every male who, and every female who, or whose husband in her right, by virtue of this my will, shall become entitled to the premises hereinbefore devised, shall, within one year after such person shall so become entitled if he or she shall then be of the age of twenty-one years, and if he or she shall then be under the age of twenty-one years then within one year after he or she shall attain twenty-one years, take and bear and continue to bear the surname of ——, either alone or in addition to and after his or her surname, and also take and bear and continue to bear the arms of ——, either alone or quartered with his or her arms, and shall, within the time aforesaid, endeavour to obtain an Act of Parliament or license from the Crown, or take such other means as shall be requisite, to enable him or her so to take and bear the surname and arms of ——.

Similar proviso to any person marrying a female taking under the will.

AND I declare that every person who shall intermarry with any female, who under this my will shall be, or who or whose husband in her right shall become, entitled to the premises hereinbefore devised, shall, within one year after such person shall so marry, or after his wife or he in her right shall so become entitled as aforesaid (which shall last happen), if he shall be of the age of twenty-one years, and if he shall be under that age then within one year after he shall attain that age, take and bear the surname of ——, either alone or in addition to and after his surname, and also take and bear the arms of ——

either alone or quartered with his arms, and shall within the time aforesaid endeavour to obtain an Act of Parliament or license from the Crown, or take such other means as may be requisite to enable him so to take and bear the surname and arms of ——. And I declare, that, in case any male who, or any female who or whose husband in her right shall so become entitled to the said premises hereby devised, or the husband of any such female, shall neglect so to take and bear such surname and arms, and to take such steps as may be required to enable such person or persons so to do within the space of time hereinbefore mentioned, then, from the expiration of such space of time, the limitations hereinbefore contained of the said premises to or in trust for the person who or whose husband shall so neglect as aforesaid shall cease, and the said premises shall devolve to the person next in remainder under the limitations hereinbefore contained, as if such person who or whose husband shall so neglect, being tenant for life, were dead, or, being tenant in tail, were dead without issue; subject and without prejudice to such charges and estates as shall have been then limited or created pursuant to any power hereinafter contained, except any rent-charge in favour of any husband so neglecting as aforesaid, and any term of years, remedy, and security for the same. And I declare that it shall be lawful for the said E. D., by any deed or deeds, with or without power of revocation and new appointment, or by her will or any co-

Proviso for forfeiture of the estate of the person neglecting to take such name and arms;

—but without prejudice to estates created under powers appendant to such estates;

—except in a particular case.

Power to the female tenant for life to appoint rent-charges in the nature of jointures

to any husband;

dicil thereto, to appoint to any husband of the said E. D., for his life, any annual sum or yearly rent-charge or annual sums or yearly rent-charges not exceeding in the whole the yearly sum of £——, for the life of such husband or any less period, to be issuing out of and charged upon all or any of the premises hereinbefore devised, free from all deductions, and to be paid at such times and in such manner as the said E. D. shall direct (*b*); And to appoint to the person for whom the same shall be provided as aforesaid usual powers for recovering the same by distress and entry upon and detention of the possession or perception of the rents and profits of the premises charged therewith; And also to appoint the said premises so charged to any person or persons for any term of years, to take effect immediately after the death of the said E. D., upon trusts for securing the payment of such annual sum or yearly rent-charge, but so that such term be made to cease (subject to any disposition which may be made under the trusts thereof,) on the death of such husband, and the payment of all arrears (if any) of his rent-charge, and all ex-

—with usual powers,

—and a term of years for securing the same.

(*b*) In a devise of real estate to a female and her issue, it is always usual to empower her to make some provision for her husband. If the property in question be small, she is sometimes authorised to appoint the whole to him for his life; if it be considerable, she is generally empowered to grant him a rent-charge for his life proportionate to the value of the property.

penses incurred by the non-payment thereof. AND I declare that it shall be lawful for the said F. G., when in possession of the premises hereby devised, by any deed or deeds, with or without power of revocation and new appointment, or by will or codicil, to appoint to any woman whom he may marry, for her life, and in full or in part for her jointure, and in bar or without being in bar of her dower or free-bench, any annual sum or yearly rent-charge, or annual sums or yearly rent-charges, not exceeding in the whole for any such woman the clear yearly sum of £——, to be issuing out of and charged upon all or any of the said premises, free from all deductions, and to be paid at such times and in such manner as to the said F. G. shall seem meet; And to limit to such woman usual powers for enforcing payment thereof by distress and entry upon and detention of the possession or perception of the rents, issues, and profits of the premises charged therewith; And to appoint the premises to be charged to any person or persons for any term or terms of years, to take effect immediately after the death of F. G., upon such trusts for securing the payment of such annual sum or yearly rent-charge as to the said F. G. shall seem meet, but so that every such term of years be made to cease (subject to any disposition which may be made under the trusts thereof) on the death of the woman for the benefit of whom the same shall be created, and the payment of the arrears (if any) of her rent-charge or rent-charges and the ex-

Power of jointuring,

—and limiting usual remedies;

—and a term of years for securing the jointure.

penses (if any) to be incurred by reason of the non-payment thereof. AND I declare, that the said premises shall not, by virtue of the powers hereinbefore contained, be at one time subject to the payment of any annual sums or yearly rent-charges exceeding in the whole the annual sum of £——; so that, if the said premises or any of them would, if this present proviso had not been inserted, have been charged with the payment of annual sums or yearly rent-charges exceeding, for such husband and wife as aforesaid, the annual sum of £——, so much of the annual sum or annual sums appointed by the said F. G. as shall form such excess shall, during the continuance of such excess, absolutely sink into and not be raisable out of the said premises. AND I declare, that it shall be lawful for the said E. D. and F. G., when they respectively shall be in possession of the said premises, by any deed or deeds, with or without power of revocation and new appointment, or by their respective wills or any codicil thereto, to charge all or any of the same premises with the payment, for the portion or portions of all or any exclusively of the other or others of the children of the person making such charge (other than an eldest or only son, or an eldest daughter for the time being entitled to the possession or to the first estate of inheritance of the same premises), of any sum or sums not exceeding £——, with interest for the same at any rate not exceeding £— per cent. per annum, to be computed from the death of the person making the charge or any subsequent

Proviso, that the premises shall not be charged with more than a certain annual sum under the last powers.

Power to the successive tenants for life to charge portions for younger children;

time, to be divided between such children respectively if more than one, in such shares, and to become vested in and to be paid to such child or children respectively, at such ages, days, or times, and with such provisions for the maintenance and education and advancement of any such child or children, and charged with such annual sum or sums of money, and with such limitations over, (such annual sum or sums of money and limitations over being for the benefit of some one or more of such last-mentioned children respectively), and in such manner as the person making such charge shall in manner aforesaid direct; And that it shall be lawful for the person making such charge, by the same or any other deed or deeds, or by her or his will or codicil, to appoint all or any of the premises so charged to any person or persons for any term or terms of years, upon usual trusts, by mortgage or otherwise, to raise the money so to be charged and the interest thereof, and the costs and expenses to be incurred in the execution of the trusts thereof. AND I declare, that the said premises shall not, under the power lastly hereinbefore contained, become subject to the payment of any greater sum for portions than the sum of £——, so that if any part of the same premises would, in case this proviso had not been inserted, have been charged with a greater sum for portions than the principal sum of £——, so much of the charge or charges by the said F. G. as shall create such ex-

and to limit terms for securing them.

Proviso, that the hereditaments shall not at any one time be charged with more than a given sum for portions.

Proviso, that the trustees shall manage the estates during the minority of any tenant for life or in tail;

cess shall not take effect. AND I declare, that, when any person entitled to the same premises as tenant for life or tenant in tail by purchase shall be under the age of twenty-one years, then the said M. N. and O. P., and the survivor of them, and the executors and administrators of such survivor, hereinafter called the trustees or trustee, shall enter into possession of the same premises, and shall during such minority continue such possession and manage the same premises, with power to fell timber for repairs, sale, or otherwise; And shall, out of the rents and profits of the same premises (including the produce of the sale of timber), after deducting the expenses of management, repairs, insurance, and other outgoings, and satisfying any annual sum charged upon any of the same premises and the interest of any principal sum charged upon any of the same premises, apply such sum or sums as they or he shall think proper for the maintenance and education of such minor, or pay such sum to the guardian or guardians of such minor, whose receipt shall be a sufficient discharge for the same; And shall invest the surplus of such rents and profits in their or his names or name upon any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, to be from time to time altered or varied as to them or him shall seem meet, and shall accumulate all the annual produce of such stocks, funds, and

and apply a competent part of the net income for the benefit of the minor;

securities in the way of compound interest, by investing the same and the resulting income thereof in their or his names or name, upon any such stocks, funds, or securities, as aforesaid. AND I declare, that the said trustees or trustee shall hold the said rents and profits, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, UPON TRUST, if the tenant for life or tenant in tail by purchase, during whose minority the said sums shall have accumulated, shall attain twenty-one years or die under that age leaving issue entitled under this my will (unless the interest of such tenant for life or tenant in tail shall have arisen and shall determine under the clauses next hereinafter referred to), to pay, transfer, or assign the same to such tenant for life or tenant in tail as his or her personal estate; But if such tenant for life or tenant in tail by purchase shall die under twenty-one years without leaving issue entitled as aforesaid, or if his or her interest in the said rents and profits shall have arisen by the forfeiture of a tenant for life and a vacancy or contingency of issue of such tenant for life, and such interest shall determine by such issue coming into existence, then UPON TRUST, upon the decease of such person or the birth of such issue as aforesaid, to convert the same into money, and to hold the same upon the trusts, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared of the monies to arise from any sale to be made under the power of sale herein

Trusts of the income so invested, and of the accumulations thereof.

Power of leasing for 21 years.

contained (*c*). AND I declare, that it shall be lawful for the said E. D. and F. G., when they shall respectively be in possession of the premises hereinbefore devised, and also for the trustees or trustee, during the minority of any person entitled to any estate for life or as tenant in tail by purchase under this my will, (*Power of leasing for twenty-one years*, *p.* 200.) AND I declare, that it shall be lawful for the said trustees or trustee, after my death, at the request in writing of the said E. D., or of the said F. G., when he shall be entitled to the possession of the said premises hereinbefore devised, and also during the minority of the said E. D., or of any son or daughter of the said E. D., F. G., or X. Y., who, if of full age, would, for the time being, be entitled to the possession of the said premises, at the discretion of the said trustees or trustee, to dispose of and convey, either by way of absolute sale or in exchange, &c. (*Power of sale and exchange*, *p.* 254.) I DEVISE all my copyhold and customary estates,

Power of sale and exchange.

Devise of copyholds:

(*c*) This proviso appears to meet the requirements of the case of a tenant for life forfeiting his or her life-interests. If such tenant for life have a child capable of inheriting the devised estates, such child will, upon attaining twenty-one, become entitled to the accumulations precisely as if the parent forfeiting were dead. If such tenant for life have no issue, the accumulations which may have accrued during the minority of the remainder-man entitled in default of such issue, will be liable to be invested in the purchase of other lands to be settled to the then existing uses of the devised premises.

(except what I otherwise devise by this my will or any codicil hereto), to the use of the said M. N. and O. P., their heirs and assigns, according to the custom or customs of the manor or manors of which the same respectively are holden, and at and under the rents, fines, heriots, suits, and services therefor respectively due and of right accustomed, UPON SUCH TRUSTS, and with, under, and subject to such powers, provisoes, and declarations as shall as nearly correspond with the uses, trusts, intents and purposes, powers, provisoes, and declarations hereinbefore declared of the freehold premises hereby devised, as the different tenure of the premises and the rules of law and equity will permit, but not so as to increase or multiply charges. I BEQUEATH all my leasehold estates, whether holden for lives or for years, (except what I otherwise bequeath by this my will or any codicil hereto), unto the said M. N. and O. P., their executors, administrators, and assigns, UPON TRUST that the said trustees or trustee shall, out of the rents and profits thereof, pay the rents and annual sums and perform the covenants and conditions in the leases thereof respectively reserved and contained, and on the part of the several lessees, or their respective executors, administrators, or assigns, to be paid, observed, or performed; And, subject thereto, shall hold the said leasehold premises upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as shall as nearly corre-

to trustees;

upon trusts to correspond with the uses of the freeholds.

Devise and bequest of leaseholds:

to trustees;

upon trust to pay the rents and perform the covenants,

and subject thereto upon trusts to correspond with the uses of the freeholds.

spond with the uses, trusts, intents and purposes, powers, provisoes, and declarations hereinbefore contained concerning the freehold premises hereinbefore devised, as the different tenure and quality of the premises and the rules of law and equity will permit, but not so as to increase or multiply charges. AND I declare, that none of my said leasehold premises shall vest absolutely in any person hereby made tenant in tail by purchase of the said freehold premises hereinbefore devised, who shall die under the age of twenty-one years, but, on the death of such tenant in tail by purchase, shall go and remain in the same manner as if they had been freeholds of inheritance and had been included in the devise in strict settlement hereinbefore contained. AND I declare, that the said trustees or trustee shall endeavour, in the ordinary course, to obtain renewed leases or grants of such of the said leasehold or copyhold premises as shall be held upon leases or grants ordinarily renewable, and shall make all surrenders and do all acts which shall be requisite for obtaining such renewals; AND I declare, that the fines and expenses of such renewals shall be borne by the premises of which such renewals shall be obtained respectively, so that the persons entitled to the same shall contribute to the expense of such renewals in the proportions in which, according to the rules of courts of equity, they would be bound to contribute in the absence of this provision. AND I declare, that it shall be lawful for the said trustees or trustee to raise any money

Leaseholds not to vest absolutely in tenant in tail by purchase who shall not attain 21.

Direction to renew renewable leaseholds in due course;

and as to the manner in which the expense of renewals shall be defrayed.

Power to raise money for the ex-

required for the renewal of any such lease or grant, by mortgage of the hereditaments to be taken by renewal as aforesaid or of any other hereditaments, subject to the uses or trusts of this my will, and to make such appointments and other assurances and do such acts as shall be necessary for effectuating such mortgage. I BEQUEATH all my books, plate, jewels, and works of art in or about my mansion-house of ——, unto the said L. M. and N. O., their executors, administrators, and assigns, IN TRUST to permit the same to be used, so far as the rules of law and equity will permit, by the person for the time being in the actual possession of the premises hereby devised in strict settlement, yet so that the same shall not vest absolutely in any person hereby made tenant in tail by purchase of the said premises, unless such person shall attain the age of twenty-one years, but, on the death of such tenant in tail, shall go and remain in the same manner as if they had been freeholds of inheritance included in the devise hereinbefore contained. AND I direct, that an inventory be made of the said books, plate, jewels, and works of art, and that two copies be made of the same, and that each of them be signed by the person entitled to the enjoyment thereof under the trusts aforesaid (if such person be of full age) and by the said trustees or trustee, and that the said trustees or trustee shall see that the books, plate, jewels, and works of art are adequately insured against loss by fire (so far as the same are capable

pense of such renewals.

Bequest of pictures, plate, &c., to trustees, upon trust, that the same may be enjoyed along with the estates as heirlooms.

Direction for the safe custody, insurance, and preservation of the articles so bequeathed.

of being so insured) and properly preserved, at the expense of the usufructuary thereof for the time being; but, nevertheless, the fashion and form of the said plate and jewels may, from time to time, be altered, the intrinsic value thereof being kept up. (*General bequest of personal estate to L. M. and N. O., their executors, administrators, and assigns, in trust to convert the same into money, supra, p. 202*); And shall, out of the monies to arise from such sale, calling in, and conversion into money, and my ready money, pay my funeral and testamentary expenses, debts, and legacies, and purchase, in their or his names or name, a sufficient amount of 3*l.* per cent. Consolidated Bank Annuities, by means of the dividends thereof to satisfy the said annuity of £——; And shall hold the residue of the said monies and the monies to arise from the conversion into money of the said 3*l.* per cent. Bank Annuities, when the said annuity of £—— shall determine, upon the trusts, and with, under, and subject to the powers, provisoes, and declarations hereinbefore declared of the monies to arise from any sale under the power of sale hereinbefore contained. (*Proviso, that, until the annuity is provided for by investment, it may be paid out of the income or principal of the general personal estate, supra, p. 264; Devise of mortgage estate, supra, p. 194; Appointment of M. N. and O. P. to be executors, with power to arrange and compromise, supra, p. 194.*) AND I declare, that any receipt of the trustees or trustee for the time

General bequest of personal estate to trustees, upon trust to convert the same into money, and pay funeral and testamentary expenses, and debts and legacies; and purchase Consols to satisfy annuity:

residue of such monies to be applied as those arising under the power of sale and exchange.

Proviso, that, until the annuity is provided for, it may be paid out of the general personal estate.

Trustees' receipts to be discharges.

being of this my will, for any money payable to them or him under this my will, shall be an effectual discharge for the money therein acknowledged to be received, and shall discharge the person taking such receipt from seeing to the application, or being accountable for the misapplication or non-application of the money therein acknowledged to be received, or from being bound to see or inquire whether any money raised by mortgage is required to be raised for the purposes of this my will. (*Power to appoint new trustees; Proviso for the indemnity of trustees, and the payment of their expenses, supra, pp.* 196, 197.) IN WITNESS &c. (*d*).

Trustee clauses.

(*d*) If the estate contain land likely to be required for building purposes, a power of granting building leases should be inserted. If the property comprise a manor, a power to enfranchise copyholds may be advantageous.

No. XVI.

WILL *of* REAL *and* PERSONAL ESTATE. —*Gift of Legacies.—Direction that Testator's Wife may occupy Mansion-house at —— for One Year.—Direction that certain unmarried Females may occupy the House and Lands at ——.—Devise of certain Real Estates to Trustees for* 500 *Years; and, subject thereto, to the Use that Testator's Wife may receive a Rent-charge, with Powers of Distress and Entry; and, subject thereto, to the Use of Trustees for a Term of* 300 *Years; and, subject thereto, to the Use of Testator's Sons and Daughters successively in Tail, with Remainders over. —Trusts of Term of* 500 *Years to raise Money to pay the Testator's Debts and Legacies.—Trusts of Term of* 300 *Years to secure the said Rent-charge and the Legacy Duty thereon.—Name and Arms Clause, with Proviso in case of a Peer. —Proviso that every Devisee in Possession shall reside in Mansion-house.—Powers of Leasing and Sale and Exchange.—Usual Clauses.*

THIS IS THE LAST WILL of me, A. B., of &c. I GIVE to my dear wife C. D. the sum of £——, to be paid to her within one calendar month from my death. I GIVE to my said wife all my jewels and trinkets, except my diamonds and the settings thereof. I ALSO GIVE to my said wife such articles of plate, works of art, or furniture, in or about my house at ——, as she shall select, not exceeding in value the sum of £——. I ALSO GIVE to my said wife such one of my carriages, and such one pair of my carriage horses, with harness for the same, as she may select. I GIVE to my friend X. Y., of &c., the sum of nineteen guineas. I DIRECT that my said wife shall have free use of my mansion-house of ——, and of the pleasure-grounds and appurtenances, and of all the pictures, books, plate, furniture, wines, stores, farming and other implements, live and dead stock in or about my said mansion-house, for one year from my death; And that, during such year, all taxes and outgoings in respect of the said mansion-house, servants' wages, and housekeeping expenses shall be paid out of my personal estate. I DEVISE my house called —— at —— in the county of ——, and the gardens, pleasure-grounds, and appurtenances, to the use of E. F., of &c., G. H., of &c., and I. K., of &c., their executors, administrators, and assigns, during such time as any of my sisters shall live without having been married, and shall make my said house their or her chief residence, UPON TRUST that the said E. F., G. H., and I. K., and the survivor of

Bequest of pecuniary and specific legacies to testator's wife.

Bequest of legacy.

Direction that the wife shall have the enjoyment of the mansion-house and home-farm for one year from the testator's death; and that all expenses during that time shall be paid out of the testator's general estate.

Devise of a house and lands to trustees, in trust to permit such of certain females as shall, for the time being, be living unmarried, to occupy the same.

them, and the executors or administrators of such survivor shall permit such of my said sisters as shall be living without having been married to occupy the said premises rent free, they or she keeping the same in order and adequately insured against loss by fire, and paying all rates and taxes in respect thereof. I DEVISE all my real estates in —— (except estates vested in me as trustee or mortgagee), including the reversion of the premises lastly hereinbefore mentioned, and subject as to my said premises at —— to the said direction in favour of my wife, TO THE USE of the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the term of five hundred years, to commence from my death, without impeachment of waste, upon the trusts, and with and subject to the powers, provisoes, and declarations, hereinafter declared; And after the expiration or sooner determination of the said term, and in the meantime subject thereto and to the trusts thereof, TO THE USE that my said wife and her assigns shall, so long as she shall continue my widow, receive an annual sum or yearly rent-charge of £——, to be charged upon and issuing out of the said premises hereinbefore devised, and to be paid by equal half-yearly payments on the —— day of —— and the —— day of ——, without deduction, the first half-yearly payment to be made on the first day of payment after my death; And TO THE USE, that, in case any part of the said yearly rent-charge of £—— shall be unpaid twenty-one days after any of the

General devise of real estate in certain counties.

To the use of trustees for 500 years.

Subject thereto,

to the use that the testator's wife may receive a rent-charge during her widowhood;

with power of distress,

said days of payment, it shall be lawful for my said wife and her assigns to enter into and distrain upon any part of the same premises, and to dispose of any distress there found according to law, to the intent that every part of the yearly rent-charge and all expenses occasioned by the non-payment thereof shall be fully paid; And TO THE USE, that, in case any part of the said yearly rent-charge of £—— shall be unpaid forty days after any of the said days of payment, it shall be lawful for my said wife and her assigns to enter upon and hold the said premises or any part thereof, and to receive the rents and profits thereof, until the same yearly rent-charge and the arrears thereof up to the time of such entry, and to become due during such possession, with all expenses she or they shall sustain by the nonpayment thereof, shall be fully paid, and such payment when taken shall be without impeachment of waste; And, subject to the said annual sum or yearly rent-charge of £——, and the powers for recovering payment thereof, TO THE USE of M. N., of &c., and O. P., of &c., their executors, administrators, and assigns, for three hundred years from my death, without impeachment of waste, upon the trusts, and with and subject to the powers, provisoes, and declarations, hereinafter declared concerning the same; And, after the expiration or sooner determination of the said term of three hundred years, and in the meantime subject thereto and to the trusts thereof, TO THE USE of my first and other sons successively, ac-

and of entry

Subject thereto,

to the use of trustees for 300 years;

subject thereto,

to testator's sons and daughters

successively in tail;

cording to their respective seniorities, in tail, with remainder to the use of my first and other daughters successively, according to their seniorities, in tail; And, for default of such issue, To THE USE of my nephew X. Y. and his assigns, for his life, without impeachment of waste, with remainder TO THE USE of the first and other sons of the said X. Y. successively, according to their respective seniorities, in tail; And for default of such issue, To THE USE of my own right heirs.

—to testator's nephew, for life;

successively in tail;

—to the testator's own right heirs.

Trusts of the term of 500 years to raise money for payment of debts and legacies.

AND I declare, that the said premises are limited to the said E. F., G. H., and I. K., for the said term of five hundred years, upon trust, that they or the survivors or survivor of them, or the executors or administrators of such survivor, hereinafter called the trustees or trustee, shall by sale or mortgage of the same premises or any part thereof, for all or any part of the same term, or out of the rents and profits thereof, raise such monies as shall be required in aid of my personal estate, for payment of my debts, funeral and testamentary expenses, and legacies other than the said yearly rent-charge, and other than the annual sums hereby directed to be raised, and shall apply the money so to be raised accordingly. AND I declare, that any receipt given by the said trustees or trustee for any sum raised by them or him under the trusts of the said term of five hundred years shall be an effectual receipt for the monies therein expressed to be received, and that no person taking such receipt shall be answerable for any loss, misapplication, or nonapplication of the same money, or be

Trustees' receipts to be discharges for money so raised.

in anywise concerned to see to the application thereof, or to ascertain that the sum to be raised is wanted for the purpose aforesaid, or as to the propriety or regularity of such transaction. AND I declare, that when the trusts hereinbefore declared concerning the said term of five hundred years shall have been satisfied or become unnecessary or incapable of taking effect, and the said trustees or trustee shall have been satisfied all costs relating to the trusts hereby reposed in them as aforesaid (and which they are hereby authorised to raise by any of the ways aforesaid, and to retain accordingly), the said term of five hundred years shall absolutely cease and determine. AND I declare, that the said premises are hereby limited to the said M. N. and O. P., their executors, administrators, and assigns, for the said term of three hundred years, UPON TRUST that the said M. N. and O. P., and the survivor of them, and the executors and administrators of such survivor, shall, out of the rents and profits of the said premises comprised in the said term of three hundred years, or by sale or mortgage of the same premises or any part thereof for all or any part of the said term, or by any other reasonable ways and means, raise the said annual sum or yearly rent-charge of £——, and also the annual sums of £——, £——, and £——, respectively, free from legacy duty, and pay the same to ——, to ——, and to ——, respectively, during their respective lives, on the same days as are hereby appointed for the payment of the said yearly

Proviso for cesser of the term.

Trusts of the term of 300 years

to secure rent-charge to testator's widow and three annuities

and pay the surplus to the reversioner;

rent-charge of £——: And shall pay the surplus of the monies so to be raised to the person for the time being entitled in remainder expectant on the determination of

and, subject to the trusts of the terms, allow the reversioner to take the rents and profits.

the said term of three hundred years; And, subject to the trusts aforesaid, shall permit the rents and profits of the premises comprised in the said term of three hundred years, or such part thereof as shall not for the time being be wanted for the purposes aforesaid, to be received by the person entitled in remainder expectant on the said term.

Proviso for cesser.

AND I declare, that when the trusts declared concerning the said term of three hundred years shall have been satisfied or become unnecessary or incapable of taking effect, and the said M. N. and O. P., their executors, administrators, and assigns, shall have been satisfied all expenses relating to the trusts reposed in them as aforesaid, and which they and he are hereby authorised to raise by any of the means aforesaid or any other reasonable means, and to retain accordingly, the said term of three hundred years shall (subject to any disposition made thereof in pursuance of the trusts aforesaid) cease.

Name and arms of the testator alone (except in the case of a peer or peeress) to be taken by every devisee and the husband of every female devisee coming into possession.

AND I declare that every person who under this my will shall become entitled to the possession of the premises hereinbefore devised in settlement shall, within one year after he or she shall so become entitled, if he or she shall then be of full age, and if not, then within one year after he or she shall attain twenty-one years, and every person who shall marry any female

who shall be entitled to the possession of the said premises shall, within one year after his wife shall so become entitled or he shall marry as aforesaid, whichever shall last happen, take and use upon all occasions the surname of B. only (unless such person be a peer or peeress, and then the surname of B., together with his or her family name, and together with the title of his or her peerage), and also take and bear the arms of B., either alone or quartered with his or her family arms, and shall, within one year after he or she shall so become entitled as aforesaid, or after he or she shall attain twenty-one (as the case may be), endeavour to obtain an Act of Parliament or licence from the Crown, or take all other requisite means to enable him or her so to take and bear the surname and arms of B. AND I declare, that the temporary change of name occasioned by the marriage of any female entitled as aforesaid, shall not be deemed a non-compliance with the aforesaid direction or a discontinuance to use the name and arms aforesaid, PROVIDED that the husband of such female shall comply with the direction hereinbefore contained applicable to him, or, in case he shall die without having so complied before the expiration of the time allowed for such compliance, his wife, in case she shall survive him for twelve calendar months, shall take the proper steps for re-assuming the name and arms of ——, and shall re-assume and bear the same. AND I declare, that, in case any such person entitled as aforesaid, shall

Temporary change of name by marriage of a female devisee not to be deemed a discontinuance to bear the name.

The estate of any person failing to

take the name and arms to be forfeited.

neglect to take and bear such name and arms as aforesaid in manner aforesaid, and to take such means as may be requisite to enable him or her so to do, within the time hereinbefore directed, then from the expiration of such time all the limitations hereinbefore contained to or for the benefit of him or her, or to or for the benefit of the wife of him so neglecting, shall cease and become void, and the said premises shall devolve to the person next in remainder under the limitations hereinbefore contained, as if such person so neglecting, or whose husband shall so neglect, being tenant for life were dead, or being tenant in tail were dead without issue. AND I declare, that every person who, under this my will, shall become entitled to the possession of the premises hereinbefore devised in strict settlement, and who shall be above the age of twenty-one years, and every person who shall marry any female so entitled, shall at all times thereafter make my said mansion-house at —— their principal place of residence, and shall not be absent therefrom more than —— at any one time, or more than —— in any one year, unless such absence shall be desirable on account of the health of any person so entitled as aforesaid, or of any wife, husband, or child of any person so entitled. AND I declare, that, if any such person as aforesaid shall not make my said mansion-house at —— their principal residence, or shall be absent therefrom for more than ——, or more than —— in any one year, at any one time (except in the cases

Mansion-house of testator to be the residence of every devisee in possession.

The estate of any devisee failing to reside to be forfeited.

aforesaid), immediately thereupon the limitations hereinbefore contained of the said premises to or for the benefit of him or her, or to or for the benefit of the wife of him who shall so act, shall cease and become void, and the said premises shall devolve to the person next in remainder under the limitations hereinbefore contained, in the same manner as if such person so acting, or whose husband shall so act as aforesaid, being tenant for life were dead, or being tenant in tail were dead without issue (*e*). And I declare, that every person who shall be in the possession of the said premises hereinbefore devised for an estate during his or her life shall, at his or her own costs, during his or her life respectively, keep in good order and repair all and singular the premises hereinbefore devised and the appurtenances thereof, and shall at the like costs keep all the buildings on such premises adequately insured against loss by fire, and, in case

Tenants for life in possession to keep the premises in repair and insured against fire.

(*e*) These two provisoes are not unfrequently desired to be inserted, but the impolicy of them is at once apparent. Many cases of extreme hardship may occur from their insertion, such as the case of the person entitled being a member of Parliament or engaged in military service. Another evil is, that, as no prudent person would advance money on the security of an interest in an estate charged with such a condition, any tenant for life under this will who had incurred debts would find great difficulty in raising money; and there is little doubt that a compulsory absence, whether as prisoner or detinue, would involve a forfeiture.

any of the said buildings shall be damaged by fire, and any money shall be received from any insurance office on account thereof, shall lay out the whole of such money (after deducting necessary expenses), as soon as conveniently may be, in rebuilding or repairing the buildings which shall have been so damaged. AND I declare, that no person being in the possession of the said premises hereinbefore devised for an estate for his or her life or any less estate shall fell timber, except what shall be required for erecting buildings or other works on the same premises, or for the repair or renewal of such buildings or other works, and except such trees as two respectable surveyors shall, by writing under their hands, certify to be in such state that they will deteriorate by remaining standing. (*Proviso that the said E. F., G. H., and I. K. shall manage the estates during the minorities of persons entitled in possession, supra, p. 280; the power to fell timber being varied thus:*—"with such power to fell timber as the person, during whose minority such possession is held, would have if of full age.") PROVIDED also, and I hereby declare, that it shall be lawful for the said X. Y., when he shall be in possession of the said premises hereinbefore devised, and also for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, during the minority of any person entitled in possession as tenant in tail by purchase to the said premises hereinbefore devised (*Power of*

Tenant for life not to fell timber, except for repairs or improvements.

Trusts during minorities of devisees.

Power of leasing.

leasing for twenty-one years, p. 253.) AND I declare, that it shall be lawful for the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, at the request of the said X. Y., when he shall be in possession of the said premises hereinbefore devised, and during the minority of any person hereby made tenant in tail by purchase, at the discretion of the said trustees or trustee, to dispose of and convey &c. (*Power of sale and exchange, supra, p.* 254.) I DEVISE AND BEQUEATH &c. (*Devise of mortgage estates, supra, p.* 193.) AND I APPOINT. (*Appointment of executors, with power to arrange and compromise Trustee clauses, pp.* 194, 195, 196, 197.) IN WITNESS &c.

Power of sale and exchange.

Devise of mortgage estates.

Usual clauses.

No. XVII.

CODICIL *devising and bequeathing Real and Personal Estate.—Revocation of Bequest in Will of certain Real Estates, and Devise of the same in Trust for Sale, with special Powers for the Trustees to sell, subject to Stipulations for Building on and improving the Lands so sold; also Powers for the Trustees to reserve Easements and Rights of Road.—Trusts of Purchase-money to pay Debts, &c.: and the Residue to be held upon the Trusts declared by the Testator's Will of Money to arise by a Sale of the Estates thereby settled.—Power to sell in Consideration of Fee-farm Rents.—Bequest of Articles as Heirlooms, with Directions as to their Preservation.*

I, A. B., of &c., do DECLARE this to be a CODICIL TO MY WILL, dated the —— day of ——. WHEREAS it might be of advantage if my real estate in —— were vested in trustees upon trust for sale, and that such trustees should have the several powers hereinafter to them given: Now I HEREBY REVOKE the devise in my said will contained of my real estate in ——. AND I DEVISE all my real estates in —— to E. F., of &c., G.

Revocation of devise of estates in ——.

Devise of real estates in ——, in

H., of &c., and I. K., of &c., their heirs and assigns (*a*), UPON TRUST that they, and the survivors and survivor of them, and the heirs and assigns of such survivor, hereinafter called the trustees or trustee, shall, as soon as convenient, sell the same premises, either together or in parcels, by public auction or private contract, with power to buy in the same premises at any auction, and to rescind or vary any contract for sale, without being answerable for any loss to be occasioned thereby, and to make such stipulations as to title or evidence of title as they or he shall think fit, with full power to give effectual receipts for the purchase-money of the premises so to be sold. AND I DECLARE, that, upon any sale of the said hereditaments hereinbefore devised, it shall be lawful for the said trustees or trustee (in case the same shall be thought proper) to make such sale, with and subject to any covenants or stipulations to be entered into on the part of the purchaser or purchasers to build upon, inclose, drain, or otherwise improve any of the lands to be purchased by them or him respectively, or to contribute towards the expense of making, keeping in repair, and embellishing any squares or open places to be laid out upon any of the lands hereinbefore devised, and of making and keeping in repair any ways, sewers, drains, or conveniences, to be laid out in any of the said lands, or

trust for sale.

Power to the trustees to sell, subject to stipulations for building on, or improving or laying out, the lands taken by the purchasers;

(*a*) The trustees of this codicil had better be the same as the trustees of the real estate devised by the testator's will.

any roads, drains, sewers, or conveniences to be purchased, or the use or enjoyment whereof shall be purchased, by virtue of the power for that purpose hereinafter given, or with or subject to any such covenants or stipulations; And that it shall be lawful for the said trustees or trustee, upon any such sale, to reserve the right of making any roads, sewers, ways, drains, and easements, in, over, or under any of the lands to be sold, either at the time of sale or at any subsequent time, and to reserve any rights of road at the time of sale or at any subsequent time, or any rights of using sewers or drains, or any rights, easements, or conveniences, in, over, or under any of the lands to be sold; And to grant to any purchaser of any part of the said premises hereinbefore devised any rights of road, or any rights of making or using any areas in or upon any part then unsold of the same premises; or of using any roads, sewers, drains, or conveniences, which or the right or enjoyment of which shall have been reserved through or under any of the lands sold; and to grant to such purchaser any rights of road or other easements which shall have been purchased under the powers hereinafter given; or to grant unto any such purchaser the right of using any of the same rights of road and other easements; And that it shall be lawful for the said trustees or trustee to stipulate with any purchaser of any of the said hereditaments as to the mode in which any part of the said hereditaments which then remain

—and to reserve rights of way, and other easements, over the land sold;

—and to grant rights of road and other easements over the unsold lands to the purchasers;

—and to stipulate with purchasers as to mode of building and improvement;

unsold, shall be built upon or improved; And generally, that any sale under the power hereinbefore contained may be made with and subject to such covenants, restrictions, agreements, rights, easements, and conveniences, as by the said trustees or trustee for the time being shall be considered to tend to the advantage of the hereditaments hereinbefore devised. AND I declare, that it shall be lawful for the said trustees or trustee to allot any part of the said hereditaments hereinbefore devised, including or excluding the sites of any of the buildings, for squares, open spaces, ways, streets, passages, drains, sewers, reservoirs, watercourses, easements, and conveniences; and to make the said lands so allotted into squares, open spaces, ways, streets, passages, drains, sewers, reservoirs, watercourses, easements, and conveniences; And to divide the said hereditaments hereinbefore devised into such lots and in such manner as shall be thought most beneficial; and also to inclose any lots into which the said land shall be so divided as aforesaid; And to remove and cut down any fences, timber, and underwood, growing and standing on the said hereditaments; And also to remove any buildings standing on the said lands; And to sell, either together or in parcels, by public auction or private contract, any materials composing any buildings, hedges, and fences so removed, and also timber and underwood so cut down; or to apply any such materials, timber, and underwood as shall be thought most bene-

—and generally to sell, subject to any stipulations which the trustees may consider for the advantage of the lands.

Power to the trustees to appropriate lands for squares, roads, &c.,

—and to lot and fence lands;

—and cut down fences and timber;

—and remove buildings;

—and to sell wood and materials,

—or apply the same for the purposes of the will;

ficial for the purposes of this codicil or any of them; And to sell, together or in parcels, by public auction or private contract, any materials composing any buildings standing on the said hereditaments, with such provisions for pulling down the buildings, the materials whereof shall be sold, and removing the materials thereof, as shall be thought proper; And to level any part of the lands hereinbefore devised, and to remove, fill up, cover in, stop, and divert any mounds, pits, ditches, ponds, drains, or watercourses in or upon the lands lastly hereinbefore devised; and also to dig and dispose of such gravel, sand, brick earth, soil, or mineral, as it shall be found convenient to remove for any purpose of this my codicil; And, generally, to manage the premises hereinbefore devised in such manner as shall by the said trustees or trustee for the time being be thought advantageous to the persons interested therein. AND I declare, that it shall be lawful for the said trustees or trustee, out of any monies which shall come to their or his hands as last aforesaid, to purchase any rights of road or other easements over or under any lands near any of the premises hereinbefore devised; And to sell any rights of road or other easements over or under any of the lands hereinbefore devised, or any rights of road or other easements which shall have been previously purchased by the said trustees or trustee, or the right of using any of the last-mentioned rights of road or other easements; And to grant to any

—and to sell buildings to be pulled down;

—and to level lands and dispose of gravel, &c.;

—and generally to manage and improve the lands.

Power to trustees to purchase easements over adjoining lands;

—and to sell such easements and new easements over the devised lands;

—and to

purchaser of any of the lands lastly hereinbefore devised, or the heirs, appointees, or assigns of such purchaser, any rights of road or other easements over or under any of the lands hereinbefore devised remaining unsold, or any rights of road or other easements previously purchased by the said trustees or trustee, or the right of using the last-mentioned rights of road or easements, either in consideration of such purchaser entering into covenants to keep in order, or to contribute towards keeping in order the roads or easements, the use whereof shall be so granted, or in consideration of a sum of money by way of purchase-money, or partly in consideration of a sum of money and partly in consideration of such purchaser covenanting to keep in order, or to contribute towards keeping in order, the said roads, sewers, drains, or easements, the enjoyment whereof shall be granted; And to exchange with any owner of adjoining lands any rights of road or other easements over or under any of the lands hereinbefore devised, for any rights of road or other easements over or under any lands near to any of the lands hereinbefore devised, and upon any such exchange to give or receive any money for equality of exchange. AND I declare, that the said trustees or trustee shall do all acts necessary for performing any covenants or agreements entered into by me in respect of any of the premises hereinbefore devised. AND I declare, that every receipt by the said trustees or trustee for any money payable on any sale, or re-

grant easements to purchasers of land, either for money or in consideration of covenants to keep the easements in order:

—and to exchange easements.

Trustees empowered generally to fulfil the testator's engagements in respect of these lands.

Trustees' receipts to be discharges.

ceived for equality of exchange upon any exchange of any of the said premises, or of such rights or easements as aforesaid, shall be a sufficient discharge for the money therein expressed to be received; and that no person taking such receipt, his or her heirs, executors, administrators, or assigns, shall be answerable for any loss, misapplication, or nonapplication, or be concerned to see to the application, of the money in such receipt expressed to be received.

Trusts of the purchase money and other monies received under the preceding trusts:

AND I declare, that the said trustees or trustee shall hold the money to arise from any sale of the premises lastly hereinbefore devised, or of such rights or easements as aforesaid, and any money to be received for equality of exchange as last aforesaid (after deducting all expenses of such sale or exchange, or incident to any of the trusts or powers aforesaid),

—to pay such of the funeral and testamentary expenses, debts, and legacies, as the said testator's ready money shall be insufficient to pay, and in exoneration of the general personal estate.

UPON TRUST that they and he thereout pay such of my funeral and testamentary expenses, debts, and legacies, as my ready money shall be insufficient to pay, it being my intention to exonerate the remainder of my personal estate from payment of my funeral and testamentary expenses, debts, and legacies, and to charge the same on the purchase-money arising from the sale or sales aforesaid.

Power to trustee to raise money by mortgage, to be discharged out of the purchase-money.

AND I declare, that it shall be lawful for the said trustees or trustee to raise any money required for carrying into effect any of the trusts or powers herein contained by mortgage of any of the premises hereinbefore devised, and to pay off such mortgages out of the monies to arise from any sale of any of the same premises; and

no person lending money on such security shall be concerned to see to the application thereof, or to ascertain whether any part of such money is required for the purposes aforesaid, or as to the propriety or regularity of such transactions. AND I declare, that the said trustees or trustee shall hold the surplus which shall remain of the monies to arise from any sale of the said premises hereinbefore devised in trust for sale, or of the rights and easements aforesaid, or to be received for equality of exchange as aforesaid, after satisfying the trusts aforesaid, upon the trusts, and with and subject to the powers, provisoes, and declarations by my said will declared concerning the money to arise from any sale of the premises by my said will devised in strict settlement, in pursuance of the power of sale thereof therein contained (but not so as to increase or multiply charges).

Surplus purchase-money to be held upon the trusts of money arising from a sale under the power of sale of the settled estate.

AND I declare, that, until the said premises hereinbefore devised in trust for sale shall have been sold, the said trustees or trustee shall apply the rents and profits thereof (after payment of repairs and all other outgoings which any other person shall not be liable to pay, and of the funeral and testamentary expenses, debts, and legacies, hereinbefore directed to be paid out of the monies to arise by sale of the same premises, and the interest of the sums to be raised by mortgage of the same premises), to the person and in the manner to and in which the rents and profits of the hereditaments to be purchased by the surplus of the money arising

Rents and profits till sale to go as the income of the lands to be purchased and settled.

from such sale as last aforesaid would be payable, in case such sale, purchase, and settlement, as in my said will directed, were made. AND I declare, that it shall be lawful for the said trustees or trustee to sell any of the said premises hereinbefore devised in trust for sale, either wholly or partly in consideration of a fee-farm rent, to be secured on the land to be conveyed, such rents to be secured and made payable as to the said trustees or trustee shall seem expedient. AND I declare, that all fee-farm rents taken as the consideration or part consideration for the purchase of any of the said last-mentioned premises, shall, as soon as conveniently may be, be sold by the said trustees or trustee, in such manner and with such powers and discretions as are hereinbefore contained with respect to the premises hereinbefore devised in trust for sale; and that the said trustees or trustee shall hold the monies to arise from such sales or sale (so far as circumstances will admit) upon the trusts, and with and subject to the powers, provisoes, and declarations, hereinbefore declared, by reference as aforesaid, concerning the said gross monies to arise from the sale of the premises hereinbefore devised in trust for sale as aforesaid. AND I BEQUEATH all my diamonds and the settings thereof, and all household furniture, books, plate, and works of art in or about my mansion-house, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, UPON TRUST that the said trustees or trustee shall permit the said diamonds and set-

Power to sell in certain events, in consideration of ground or fee-farm rents to be reserved.

The rents so reserved to be sold as the land.

Bequest of diamonds and personal chattels to go as heirlooms, except that the wife is to have the diamonds for her life.

tings to be used by my wife during her life; and shall permit the said diamonds and settings from the death of my said wife, and the said household furniture, books, plate, and works of art from my death, to go along with, and be used, so far as the rules of law and equity will permit, by the person for the time being entitled to the possession of the premises by my said will devised in strict settlement, yet so that the same shall not vest absolutely in any person thereby made tenant in tail by purchase who shall not attain twenty-one years, but on the death of such tenant in tail shall go and remain in the same manner as if they had been freeholds of inheritance included in the devise in strict settlement thereinbefore contained. AND I direct, that an inventory be made of my said diamonds and settings, and another of my said household furniture, books, plate, and works of art, as soon as may be, and that two copies be made of each of the said inventories; and that both copies of each of the said inventories be signed by the person for the time being respectively in possession of my said diamonds and settings, and of my said household furniture, books, plate, and works of art, and by the said trustees and trustee, and that one of each of the said copies shall be kept by the said trustees or trustee; And I direct that the said diamonds and settings, household furniture, books, plate, and works of art, shall be preserved at the expense of the usufructuary thereof for the time being. AND I declare, that it shall be lawful for

Direction to make inventories of.

Power to replace and

exchange any of the heirlooms for similar articles;

the usufructuary for the time being of the said diamonds and settings, household furniture, books, plate, and works of art, respectively, with the consent of my said trustees or trustee, to alter the setting of the said diamonds, and to replace or exchange any part of the said household furniture, books, plate, and works of art, with or for other articles of the same or a like nature, and of equal or greater value, and to alter the fashion of the said plate, so that the intrinsic value thereof may not be diminished; And I declare, that no such usufructuary as aforesaid shall be bound to replace any of the said articles lost or destroyed by accident (otherwise than by fire), or worn out or destroyed in ordinary course and from reasonable wear and tear.

—but articles lost or worn out not to be replaced.

Heirlooms to be adequately insured against loss by fire.

AND I declare, that each usufructuary for the time being of the said diamonds and settings, household furniture, books, plate, and works of art, respectively, shall keep insured against loss by fire in some insurance office in London or Westminster, in an adequate sum, all such of the said articles as are for the time being in existence, and all such articles as shall be substituted in the place of any articles hereinbefore bequeathed; and in case any of the said articles so insured shall be destroyed or damaged by fire, and any money shall be received from any insurance office on account thereof, then the whole of such money (after deducting necessary expenses) shall be laid out in replacing or repairing the articles so destroyed or damaged.

Substituted articles to

AND I declare, that any articles which shall be

substituted for any articles hereinbefore bequeathed, shall be specified from time to time in the inventories to be made and kept by the persons and in manner hereinbefore mentioned with respect to the inventories of articles hereinbefore bequeathed; and all articles so substituted are to be subject to the trusts and provisions hereinbefore contained with respect to the articles hereinbefore bequeathed in lieu of which such new articles shall be substituted. AND I declare, that the said trustees, or any of them, shall not be answerable for the loss, damage, or destruction of any of the said articles, or on account of the same not being so insured as aforesaid, or on account of the money received in respect of any such insurance not being applied in manner hereinbefore directed. AND I declare, that the power of appointing new trustees in my said will contained in lieu of the said E. F., G. H., and I. K., shall be held to extend to the appointment of any new trustees for the purposes of this my codicil; And in all other respects I ratify and confirm my said will. IN WITNESS &c.

be inventoried, and go as original heirlooms.

Trustees not to be personally responsible for loss or non-insurance of heirlooms.

No. XVIII.

WILL *of* FREEHOLD *and* COPYHOLD ESTATE.—*General Devise of Real Estate, to the Use of Trustees for* 1000 *Years, and, subject thereto, to the Use of Testator's Sons and their Issue in strict Settlement; with Remainder to the Use of Testator's Brother and his Issue in strict Settlement; Remainder to the Use that each of Testator's Daughters and each Daughter of his Son might receive a Rent-charge; with Powers of Distress and Entry; with Remainders over.—Trusts of Term of* 1000 *Years, to raise Money for the Payment of the Testator's Funeral and Testamentary Expenses, Debts, and Legacies.—Declaration that the Testator's Personal Estate, not specifically bequeathed, should be the primary Fund for the Payment of the said Debts, Legacies, Funeral and Testamentary Expenses.—Name and Arms Clause.—Powers of Jointuring and of charging Portions for younger Children.—Power of Leasing.—Power to grant Building and Repairing Leases.—Power to grant Mining Leases.—Power of Enfranchisement of Copyholds.—Power to*

grant Licenses to Copyholders for Improvements — Power of Partition.— Power of Sale and Exchange.—(Usual Clauses.)

THIS IS THE LAST WILL of me, A. B., of &c. I DEVISE all my real estates, except what I otherwise devise, and except estates vested in me as trustee or mortgagee, TO THE USE of C. D., of &c., and E. F., of &c., their executors, administrators, and assigns, for one thousand years, without impeachment of waste. And after the determination of the said term, and in the meantime subject thereto and to the trusts thereof, to the use of my son G. H., of &c., and his assigns, during his life, without impeachment of waste; With remainder to the use of each son of the said G. H. born during my life, for the life of such son, without impeachment of waste; And after the decease of each such son, to the use of his first and other sons successively, according to their respective seniorities, in tail male, the elder of the said sons of the said G. H., and his issue, to be preferred to and take before the younger of the said sons of the said G. H., and his and their issue; With remainder to the use of every son of the said G. H. born after my death, successively, according to their respective seniorities, in tail male; With remainder to the use of every son of my body hereafter to be born, during his life, without impeachment of waste; With remainder to the use of his first and other sons successively

General devise of real estate, —to the use of trustees for the term of 1000 years; —and, subject thereto, —of testator's son for life; —remainder to sons of that son born in testator's lifetime, for life, with remainder to their sons in tail male.

Remainder to the sons of the same son born after the testator's death, in tail male.

Remainder to testator's after-born

sons, for life, and to their sons in tail male.

in tail male, the elder of my said sons hereafter to be born and his issue to be preferred to and to take before the younger of my said sons hereafter to be born and his and their issue; With remainder to the use of my brother E. B. and his assigns, during his life, without impeachment of waste; With remainder to the use of each son of the said E. B. born during my life, for the life of such son, without impeachment of waste; With remainder to the use of the first and other sons of each such son successively, in tail male, the elder of the said sons of the said E. B. to be born during my lifetime, and the issue of such son, to be preferred to and take before the younger of the said sons of the said E. B. born during my lifetime, and his and their issue; With remainder to the use of every son of the said E. B. born after my death, successively, according to their respective seniorities, in tail male; With remainder to the use that each of my daughters, and each daughter of my said son G. H., living at the determination or failure of the uses hereinbefore limited, and her assigns, may receive during her life one annual sum or yearly rent-charge of £——, to be chargeable upon and payable out of the said premises hereinbefore devised, and to be paid by equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, without any deduction or abatement whatsoever (except legacy duty), the first quarterly payment

Remainder to the use of testator's brother for life.

Remainder to the sons of the brother born in the testator's lifetime, for life, and to their sons in tail male

Remainder to the after-born sons of the brother in tail male.

Remainder to the use that each daughter of the testator, and of his son then living, may receive an annual rent-charge;

to be made on such of the said days of payment as shall happen next after such annual sum or yearly rent-charge shall take effect under the limitations aforesaid; And to this further use, that, so often as any such annual sum of £——, or any part thereof, shall be unpaid by the space of twenty-one days after any of the days appointed for payment thereof, then it shall be lawful for the daughter to whom such annual sum so in arrear is payable, or her assigns, to enter into and distrain upon the said premises hereinbefore devised, or any part thereof, and to dispose of the distress or distresses then and there found according to law, to the intent that thereby or otherwise such annual sum so in arrear, and all expenses occasioned by the nonpayment thereof, shall be paid; And further, that in case any such annual sum shall be unpaid by the space of forty days after any of the days appointed for the payment thereof as aforesaid, then it shall be lawful for the daughter to whom such annual sum so unpaid is payable, and her assigns, to enter into and to hold the said premises hereinbefore devised, or any part thereof, and to receive the rents and profits thereof to her and their own use, until she or they shall be paid the same annual sum and the arrears thereof, due at the time of such entry, or to become due during her or their being in possession of the same premises, with all expenses which she or they shall sustain by the nonpayment thereof, and such possession to be without impeachment of waste; And, sub-

—with power of distress

—and entry

Remainder to sons of a certain person in tail male.

ject and charged as hereinbefore is mentioned, To THE USE of every the son of S. T., of &c., successively, according to their respective seniorities, in tail male; with remainder TO THE USE of my own right heirs.

Remainder to testator's right heirs.

Trusts of the term of 1000 years—to raise money for the payment of the testator's funeral and testamentary expenses, debts, and legacies;

AND I DECLARE, that the said premises are limited to the said C. D. and E. F., for the said term of one thousand years, UPON TRUST that they the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, (hereinafter called the trustees or trustee,) shall, by mortgaging, selling, or disposing of the said premises, or any of them, for all or any part of the said term, or out of the rents and profits of any of the said premises, or by any other reasonable means, raise any sum or sums of money which they the said trustees or trustee think fit, for the payment of my funeral and testamentary expenses, debts, and legacies;

—and apply the same accordingly.

And shall apply the monies so to be raised, or any of them, towards the payment of my said funeral and testamentary expenses, debts, and legacies;

Receipts of trustees to exonerate the persons advancing money for the purposes of the term.

And I declare that the receipt of the said trustees or trustee shall be an effectual discharge for the money in such receipt acknowledged to be received; And that no person taking such receipt shall be bound to see to the application of the money in such receipt acknowledged to be received, or be answerable for the misapplication or nonapplication thereof, or whether the money proposed to be raised is wanted for any of the purposes aforesaid.

The personal estate not specifically

AND I DECLARE, that although both or either of the said funds may be

resorted to as the said trustees or trustee shall think fit, yet, as between the person or persons entitled to my personal estate not hereby specifically bequeathed, and the persons entitled to the real estate hereinbefore devised, my said personal estate not specifically bequeathed shall be considered as the primary fund, and the said term of one thousand years the secondary fund, for the payment of my said funeral and testamentary expenses, debts, and legacies.

Personal estate not specifically bequeathed to be the primary fund for payment of such funeral and testamentary expenses, debts, and legacies

AND I HEREBY DECLARE, that, when the trusts hereby declared of the said term of one thousand years shall have been fully satisfied or become incapable of taking effect, and the said trustees or trustee shall have been fully reimbursed all expenses relating to the trusts hereby reposed in them as aforesaid (and which they are hereby authorised to raise by any reasonable means, and to retain), the said term of one thousand years shall (subject to any disposition made of any of the premises therein in pursuance of the trusts aforesaid) cease and determine.

Proviso for cesser of the said term of 1000 years

AND I HEREBY DECLARE, that every person who shall become entitled to the possession of the premises hereinbefore devised, shall, within one year after he shall become so entitled if of full age, and if he shall be under age then within one year after he shall attain the age of twenty-one years, take and use upon all occasions the surname of B. and no other surname, and also take and bear the arms of B. and no other arms, or if such person be a peer, then the surname of B. with the title of his peerage, and the

Name and arms clause.

arms of B. quartered with the armorial bearings of his peerage, and shall, within one year after he shall so become entitled or after he shall attain the age of twenty-one years, as the case may be, endeavour to obtain an Act of Parliament or license from the Crown, or take such other means as may be requisite, to enable him to take and bear the surname of B., either alone or together with the title of his peerage, as the case may be, and the arms of B., either alone or quartered with the armorial bearings of his peerage, as the case may be. AND I DECLARE, that, in case any such person shall refuse to take and bear such surname and arms as aforesaid, or to take such means to enable him so to do within the said space of one year, then, after the expiration of the said space of one year, the limitation hereinbefore contained of the said premises to him so neglecting shall cease and be void, and the said premises shall thereupon devolve to the person next in remainder, in the same manner as if such person so neglecting, being tenant for life, were dead, or, being tenant in tail male, were dead without issue male. AND I DECLARE, that the cesser or determination of the estate of any person under the aforesaid proviso for that purpose shall not prejudice any jointure, portion, or any term of years, remedies and securities for the same respectively, lease or demise, which before such cesser or determination shall have been created in any of the said premises, pursuant to any power for those purposes hereinafter con-

Estates of devisees neglecting to take name and arms to be forfeited

Interests created by tenants for life, under their powers, before forfeiture, not to be affected by forfeiture.

tained. AND I DECLARE, that it shall be lawful for each person hereby made tenant for life, either before or after he shall be entitled to the possession of the said premises hereinbefore devised in strict settlement (but subject to the uses and estates preceding the estate of the person exercising this power, and to the powers annexed to such preceding uses or estates, and to the uses or estates limited in exercise of such powers, or any of them), by deed, with or without power of revocation, or by will or codicil, to appoint unto any woman whom such person may marry or have married, for her life, for jointure, and in bar or without being in bar of dower or free bench, any annual sum or yearly rent-charge, not exceeding for any such woman the yearly sum of £——, to be charged upon any of the premises hereinbefore devised in strict settlement, free from deductions, to be paid at such times and in such manner as to such person shall seem meet; And also to appoint to the woman to whom such annual sum or yearly rent-charge shall be so appointed, usual powers for recovering payment thereof, by distress and entry upon and detention of the possession or perception of the rents and profits of the premises so to be charged; And also to appoint the premises so to be charged to any person or persons whomsoever, for any term or terms of years, with or without impeachment of waste, to take effect upon the death of the person exercising this present power, upon usual trusts for securing the payment of such annual

Power of jointuring.

—and of limiting usual powers and remedies,

and terms of years.

No jointure to become a lien, unless either the person limiting the same or some of his issue become entitled in possession.

sum or yearly rent-charge. AND I DECLARE, that no jointure appointed under the power lastly hereinbefore contained shall become a lien upon any of the said premises, unless the person appointing the same, or some issue of such person, shall become entitled to the possession of the same premises. AND I DECLARE, that the said premises shall not, under the power lastly hereinbefore contained, be at one time subject to the payment of any annual sums or yearly rent-charges exceeding in the whole the sum of £——; and that so much of any annual sum by which any excess over the said sum of £—— shall have been occasioned, shall from time to time, during the continuance of such excess, sink into and not be raisable out of the said premises; and the same annual sums or yearly rent-charges shall have priority of payment according to the priority of the estates of the several persons exercising the said power lastly hereinbefore contained.

The estate not to be subject to more than a specified annual sum in respect of jointures at once.

Power of charging portions for younger children,

AND I DECLARE, that it shall be lawful for every person hereby made tenant for life, at any time or times, either before or after he shall be entitled to the possession of the said premises hereinbefore devised in strict settlement (but subject to the uses and estates preceding the estate of the person exercising this power, and to the powers annexed to such preceding uses or estates, and to the uses or estates limited in exercise of such power, or any of them), by deed, with or without power of revocation and new appointment, or by will or codicil, to charge all or any of the same

premises with the payment for the portion or portions of the child or children, or any one or more exclusively of the other or others of the children of the person making such charge (other than an eldest or only son), if there shall be but one such child (other than an eldest or only son), of any sum or sums not exceeding £—— ; and if there shall be but two such children (other than an eldest or only son), of any sum or sums not exceeding £—— ; and if there shall be but three such children (other than an eldest or only son), of any sum or sums not exceeding £—— ; and if there shall be four or more such children (other than an eldest or only son), of any sum or sums not exceeding £—— ; to be an interest vested or interests vested in, and to be payable and divisible unto or among such child or children, or any one or more of them, at such age or time, or respective ages or times, in such manner, and if more than one in such shares, and with such powers for the advancement in the world of any such son or sons at the discretion of any trustee or trustees, or otherwise, and with such other powers, provisoes, restrictions, and limitations, for the benefit of such child or children or some or one of them, as the person exercising this power shall direct; And in manner last aforesaid to charge the premises charged with any such portion with the payment of any annual sum or sums of money, not exceeding the interest of the portion or portions so to be charged at the rate of £—— per cent. per annum. to be ap-

—varying according to the number of children;

—and with annual sums by way of interest on the portions for maintenance,

plied for the maintenance and education of the child or children for whom such portion or portions shall be intended, until such portion or portions shall be payable, such annual sum or sums to be free from all deduction, and to commence at such time or times, and to be raised and paid in such proportions and at such times, and be applied at the discretion of such person or persons, and in such manner, as the person exercising this present power shall direct; And it shall be lawful for the person exercising the power hereinbefore contained in manner aforesaid, to appoint the premises so to be charged to any person or persons for any term or terms of years, with or without impeachment of waste, upon usual trusts, by mortgage or otherwise to raise the money so to be charged, and the interest thereof, and the expenses to be incurred in the execution of the trusts thereof. AND I DECLARE, that no portion charged under the power lastly hereinbefore contained, or any interest on any such portion, shall become a lien upon the said premises, or be payable, unless the person charging the same shall be or become entitled to the possession of the said premises, or unless some issue of such person shall become so entitled. AND I DECLARE, that the said premises shall not, under the power lastly hereinbefore contained, become subject to the payment of any greater sum for portions than the principal sum of £——, and that so much of any charge by which any excess over the said sum of £—— shall have been occasioned, shall not be raisable out of the said premises; and the

—and to limit terms of years for raising the same

No portion to become a lien, unless the person charging the same, or some of his issue, become entitled in possession.

The estates not to be subject to more than a specified sum for portions at once.

same portions respectively shall have priority of payment according to priority in order of limitation of the estates of the persons exercising the power lastly hereinbefore contained. AND I DECLARE, that it shall be lawful for the several persons hereby made tenants for life, when in possession of the said premises hereinbefore devised in strict settlement, and also for the said trustees or trustee during the minority of any person who shall be for the time being entitled to the actual possession of the said premises, by deed to appoint by way of lease any of the said premises to any person or persons, for any term of years not exceeding twenty-one years, to take effect in possession, so as there be reserved on every such lease the best yearly rent or rents, to be incident to the immediate reversion, that can be reasonably gotten for the same, without taking anything in the nature of a fine, premium, or foregift, and so as there be contained in every such lease a condition of re-entry for nonpayment, within a reasonable time to be therein specified, of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and do thereby covenant for the due payment of the rent or rents thereby reserved, and be not made dispunishable for waste. AND I DECLARE, that it shall be lawful for the said several persons hereby made tenants for life, when they respectively shall be in possession of the said premises hereinbefore devised in strict settlement, and also for the said trustees or trustee during the mino-

Power to grant leases for 21 years

Power to grant building and repairing leases.

rity of any person for the time being entitled to the possession of the same premises, by deed to appoint, by way of lease, any part or parts of the said premises to any person or persons who shall or may improve the same, by erecting thereon any new buildings, or by rebuilding or repairing any buildings which now stand or hereafter shall stand on the same premises, or by expending any sum or sums of money in the improvement of such buildings, or who shall covenant so to do within two years after the date of such deed, for any term of years not exceeding ninety-nine years to take effect in possession, so as there be reserved on every such lease the best yearly rent or rents, to be incident to the immediate reversion of the hereditaments so to be appointed, that can be reasonably gotten for the same, without taking anything in the nature of a fine, premium, or foregift for the making thereof, and so as there be contained in every such lease a condition of re-entry for nonpayment within a reasonable time, to be therein specified, of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and do thereby covenant for the payment of the rent or rents thereby reserved.

Power to grant mining leases.

AND I DECLARE, that it shall be lawful for the said several persons hereby made tenants for life, when in possession of the said premises hereinbefore devised in strict settlement, and also for the said trustees or trustee during the minority of any person for the time being entitled to the possession of the same premises, at any time, by deed

to appoint, by way of lease, any of the mines, quarries, minerals, and substances in, under, or upon the said lands, or any of them, either with or without any messuages, lands, or heredita ments convenient to be held with the same respectively, and either with or without the surface of any lands in or under which the same shall lie, unto any person or persons, for any term of years not exceeding sixty years to take effect in possession, with full license and authority to search, seek, bore, dig, drive and sink for, discover, work, get, and raise the said mines, quarries, minerals, and substances, and to do whatsoever shall be needful for the winning, working, getting, washing, cleansing, and smelting of the said minerals and substances, and for the manufacturing and carrying away the same, so as there be reserved on every such lease the bes. rents, tolls, duties, royalties, or reservations, by the acre or by the ton or otherwise, to be incident to the immediate reversion of the hereditaments so to be appointed, that can be reasonably gotten for the same, without taking anything in the nature of a fine, premium, or foregift for the making thereof, and so as there be contained in every such lease a condition of re-entry for nonpayment or nondelivery, within a reasonable time to be therein specified, of the rents, tolls, duties, royalties, or reservations thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and thereby covenant for the due payment or delivery of the rents, tolls, duties, royalties, or reserva-

Power of enfranchisement of copyholds.

tions thereby to be reserved. AND I DECLARE, that it shall be lawful for the said trustees or trustee, at any time during the life of any person hereby made tenant for life, who shall be for the time being entitled to the possession of the said premises hereinbefore devised in strict settlement, with his consent in writing if he shall be of full age, and also at any time or times during the minority of any person hereby made tenant for life or tenant in tail male by purchase, who shall be for the time being entitled to the possession of the said premises, at the discretion of the said trustees or trustee, to enfranchise any lands or tenements holden of any manor subject to the uses of this my will, upon such terms as the said trustees or trustee shall think reasonable, and thereupon, by any deed or deeds sealed and delivered by them or him in the presence of and attested by two or more credible witnesses, to appoint, as the copyhold or customary tenant or tenants of such premises and his or their heirs shall direct, the freehold and inheritance of the same premises, together with or without such common rights and privileges as shall have been appendant or appurtenant to such premises before the enfranchisement thereof; And every person taking under such appointment, and his heirs, shall, according to the estate appointed to him, have and hold the premises so to be appointed, with the appurtenances, discharged from all customary or copyhold tenures, and all rents, fines, heriots, and customary payments which would have been payable to the

lord or lords thereof in respect of such premises, and discharged from all uses, trusts, and powers hereinbefore declared, but subject to such reservations as may be reserved upon such enfranchisement, and shall hold as freehold tenant or tenants all such rights in and upon any of the commons or waste grounds, parcel of any manor or manors, as shall have been appendant or appurtenant to the said premises before the enfranchisement thereof, and shall be thereupon appointed as aforesaid. AND I DECLARE, that all rents reservations, and privileges, which shall be reserved upon any enfranchisement under this present power, shall be enjoyed by the person or persons who for the time being would have been entitled to the accustomed payments and privileges in respect of or over the copyhold or customary premises so enfranchised, in case no such enfranchisement had been made. AND I DECLARE, that it shall be lawful for the said trustees or trustee, during the life of any person hereby made tenant for life, who shall be for the time being entitled to the premises hereinbefore devised in strict settlement, with his consent in writing if of full age, and also during the minority of any person hereby made tenant for life or tenant in tail male by purchase, who shall be entitled to the possession of the said premises, at the discretion of the said trustees or trustee, to grant to any copyhold or customary tenant of any messuages, lands, or tenements, holden of any manor subject to the uses and limitations of this my

Annual payments (if any) reserved on enfranchisement to go as the profits of the seigniory would have gone.

Power to grant licenses to copyholders to demise and do other acts for improving their tenements.

will, a license authorising such tenant to build on or otherwise improve any part of his tenements, and to make roads and streets in or through the same, and to annex the same or any part thereof to adjacent ground for the purpose of improvement, and to pull down any messuages or erections standing on his said tenements, and to demise all or any part of such tenements for any term not exceeding twenty-one years (or, for building, rebuilding, or repairing purposes, for any term not exceeding ninety-nine years) from the time of granting such licenses; And, with the consent of the tenant to whom any such license shall be granted, to fix the sum which, during the term mentioned in such license, shall be considered the annual value of the fines payable to the lord upon the admission of any new tenant to any tenement built on or improved, or for the building on and improvement of which such license shall be granted, so that the sum fixed shall not be less than the best annual rent which might be reasonably obtained on a demise of the premises therein mentioned for such term of years as shall be expressed in such license, without taking any fine or foregift for making any such demise, and so that the sum fixed shall not be considered as the annual value according to which the fine is to be assessed for any greater number of years than the term mentioned in such license, and so that no fine or foregift be taken for the granting of such license except the customary annual fine (if any) for every year of

the term expressed in such license, and such fees as shall be usual and reasonable in that behalf; and so that upon the grant of every such license there be reserved to the lords of the said manors or lordships respectively for the time being all fines, rents, heriots, customs, and services due and to grow due in respect of the tenements as to which such license shall be granted: PROVIDED always, that every such license shall be entered on the court-rolls or court-books of the said manors or lordships respectively. AND I DECLARE, that it shall be lawful for the said trustees or trustee, during the life of any person hereby made tenant for life, who shall be entitled to the possession of the said premises hereinbefore devised in strict settlement, with his consent in writing if he shall be of full age, and during the minority of any person hereby made tenant for life or tenant in tail male by purchase, who shall be entitled to the possession of the said premises, at the discretion of the said trustees or trustee, to concur with the person or persons seised of or entitled to any undivided share or shares of any hereditaments, of which only an undivided share or undivided shares is or are hereinbefore devised, in making a partition of the same hereditaments or any part thereof, and to give or receive any sum of money for equality of partition. AND I DECLARE, that, for effectuating such partition, it shall be lawful for the said trustees or trustee, with such consent or at such discretion as aforesaid, by deed to revoke any of the uses, trusts, powers, and provisoes hereby limited

Licenses to be entered on court-rolls.

Power of partition.

and declared, or to be limited or declared under the powers herein contained of jointuring or charging portions, of the share or shares hereinbefore devised of the hereditaments of which it shall be desired to make partition as aforesaid (but subject to any lease granted under any power of leasing herein contained), and by the same or any other deed or deeds to limit or appoint any use or uses, trust or trusts, of the share or shares which it shall be thought necessary to appoint in order to effectuate such partition. AND I DECLARE, that it shall be lawful for the said trustees or trustee, during the life of any person hereby made tenant for life, who shall be for the time being entitled to the possession of the said premises hereinbefore devised in strict settlement, with his consent in writing if he shall be of full age, and during the minority of any person hereby made tenant for life or tenant in tail male by purchase, who shall be entitled to the possession of the said premises, at the discretion of the said trustees or trustee, to dispose of and convey, either by way of sale or in exchange for other manors, lands, or hereditaments situate in England or Wales, all or any of the said premises hereinbefore devised in strict settlement, and the inheritance thereof in fee simple, for such price or prices in money, or for such an equivalent in manors, lands, or hereditaments, as to the said trustees or trustee shall seem reasonable, and upon any such exchange to give or receive any sum for equality of exchange. AND I DECLARE, that

Power of sale and exchange.

Trustees to have full

any such sale may be by public auction or private contract, and that the said trustees or trustee shall have full power to insert any stipulations as to title or evidence of title or otherwise in any conditions of sale or contract for sale or exchange of any of the said premises, and shall have power to buy in any of the same premises at any sale by auction, and to rescind or vary any contract for sale or exchange, and to resell the premises which shall be so bought in or as to which the contract shall be so rescinded, without being responsible for any loss occasioned thereby; AND that, upon any such sale or exchange, it shall be lawful for the said trustees or trustee, with such consent or at such discretion as aforesaid, by deed to revoke any of the uses, trusts, powers, and provisoes hereinbefore declared or to be declared under any of the powers hereinbefore contained (but subject to any mortgage or other disposition under the trusts of any term of years hereinbefore limited, or of any term of years to be limited under the aforesaid powers of jointuring or charging portions, and subject to any lease granted under any power of leasing hereinbefore contained), and by the same or any other deed to declare any use or uses, estate or estates, trust or trusts, of the said premises which shall be thought necessary to effectuate such sale or exchange as aforesaid. AND I FURTHER DECLARE, that the said trustees or trustee shall receive the money payable upon any enfranchisement or sale, or for equality of partition or exchange, and shall in-

discretion as to the manner and conditions of sale and exchange.

Power, in order to effectuate a sale or exchange, to revoke old and appoint new uses.

Money to be received on any sale or exchange to be laid out in the purchase of lands;

vest the same in the purchase of manors or hereditaments in fee simple in possession, in England or Wales, or of lands of a leasehold or copyhold or customary tenure convenient to be held therewith or with any hereditaments subject to the uses or trusts of this my will, yet so that, during the life of any person hereby made tenant for life entitled as aforesaid who shall be of full age, every such purchase be made with his consent in writing; And that the said trustees or trustee shall settle or cause to be settled all freehold hereditaments so to be purchased or taken in exchange as aforesaid, to the uses, upon the trusts, and with and subject to the powers, provisoes, and declarations herein limited and declared, or under the said powers of jointuring or charging portions to be limited and declared, concerning the said premises hereinbefore devised in strict settlement, or as near thereto as the deaths of parties and other intervening accidents will admit of (but not so as to increase or multiply charges); And shall settle or cause to be settled all leasehold, copyhold, or customary hereditaments to be purchased or taken in exchange as aforesaid, upon and for such trusts, and with, under, and subject to such powers, provisoes, and declarations, as shall correspond with the uses, trusts, intents and purposes, powers, provisoes, and declarations herein limited, or under the said powers of jointuring or charging portions to be limited, concerning the premises hereinbefore devised in strict settlement, or as near thereto as

the freehold parts whereof are to be settled to the subsisting uses of the will;

and the leasehold and copyhold upon corresponding trusts.

the different tenure of the premises, and the rules of law and equity, and the deaths of parties, and other intervening accidents will admit of (but not so as to increase or multiply charges); And so that no lands so to be purchased held for lease or leases for years shall vest in any person hereby made tenant in tail male by purchase who shall not attain twenty-one years, but on the death of such person shall devolve in the same manner as if they had been freeholds of inheritance and had been settled accordingly.

but so that leaseholds for years shall not vest absolutely in a tenant in tail male by purchase dying under 21.

AND I DECLARE, that if any of the lands so to be purchased as aforesaid shall be held for a lease or leases or a grant or grants for lives or for years, proper provisions shall be inserted in the settlement thereof for renewing such leases or grants as occasion shall require; And that the fines and expenses of such renewals shall be defrayed out of the premises of which such renewals are to be made respectively, so that the persons beneficially entitled to the same under the settlement to be made thereof shall contribute to the expense of such renewals in the proportions in which they would be bound to contribute in the absence of this present provision.

Provision to be made for the renewal of leasehold and other lifehold property.

AND I DECLARE, that it shall be lawful for the said trustees or trustee, out of the monies to be received upon any enfranchisement, sale, or for equality of partition or exchange, to pay any sum which upon any partition or exchange shall be payable by them or him for equality of partition or exchange, and to raise any money which shall be wanted to be paid by them or him for

Power for the trustees to apply purchase-money or money received for equality of exchange in payments for equality of exchange, and to raise money for the same

purposes and for renewal of leases.

equality of partition or exchange, or for the renewal of any such lease or grant as aforesaid, by mortgage of any hereditaments for the time being subject to the uses or trusts of this my will, and to do all such acts as shall be necessary for effectuating any such mortgage; And no mortgagee advancing money upon any mortgage purporting to be made under this power shall be bound to see that such money is wanted, or that no more than is wanted is raised, or shall be bound to see to the application or be answerable for the misapplication or nonapplication of the money in any receipt acknowledged to be received. AND I DECLARE, that it shall be lawful for the said trustees or trustee, upon the request of any person hereby made tenant for life, who shall be for the time being entitled as aforesaid if of full age, or, if there shall be no person for the time being so entitled as aforesaid and of full age, at their or his discretion, to apply any money to be received upon any sale or enfranchisement, or for equality of partition or exchange, towards paying off any incumbrance affecting any of the hereditaments subject to the uses or trusts of this my will, but without changing the obligations of the parties claiming under this my will as to the defraying of the fines and expenses of such renewals as aforesaid. AND I DECLARE, that, until the money to be received as last aforesaid shall be disposed of in the manner hereinbefore mentioned, it shall be lawful for the said trustees or trustee, with such consent or at such discretion as last afore-

Power for trustees to apply monies received on a sale or exchange in discharge of incumbrances.

Power for the trustees, till the monies to be received can be applied for the before-mentioned pur-

said, to place out such money at interest in the parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England or Wales, in the names or name of such trustees or trustee, and to alter, vary, and transpose the said stocks, funds, and securities as occasion shall require. AND I DECLARE, that the annual produce of such stocks, funds, and securities shall be paid in such manner as the rents and profits of the hereditaments to be purchased therewith would go in case such purchase and settlement as aforesaid were actually made. AND I DECLARE, that every receipt in writing of the said trustees or trustee, for any money payable to them or him under this my will, or any of the trusts or powers hereof, shall be a sufficient discharge for the money expressed to be received, and that every person taking the same, his or her heirs, executors, administrators, or assigns, shall not be answerable for any loss, misapplication, or nonapplication, or be in anywise obliged or concerned to see to the application thereof. (*Devise and bequest of copyholds and leaseholds upon trusts to correspond with the uses of the freeholds, supra, pp.* 282, 283. *Provisoes as to the renewal of renewable leaseholds and copyholds, supra, p.* 283.) AND I APPOINT the said G. H. executor of this my will; and authorise &c. (*Power for executor to compromise, supra, p.* 194. —*Power to appoint new trustees, supra, p.* 195.— *Clauses for the indemnity of trustees and payment of their expenses, supra, p.* 196.) IN WITNESS &c.

poses, to invest in Government or real securities.

The income thereof to go as the income of lands to be purchased.

Trustees receipt clause.

Usual clauses.

Appointment of executor, with power to arrange and compromise.

Usual clauses.

No. XIX.

WILL *of* REAL *and* PERSONAL ESTATE.—*Bequest of Personal Estate, except Money and Securities for Money, to Testator's Wife.—Legacies to Children, to vest at specified Ages, but the Payment to be postponed till the Death or Marriage of Testator's Wife.—Power for Trustees to advance Part of the Legacies of Daughters who marry with Consent.—Legacies to Executors.—Devise of Real Estate to Trustees, Upon Trust to sell, pay Debts, Funeral and Testamentary Expenses, and Legacies not postponed; and invest the Surplus, and hold the same upon the Trusts thereinafter declared of Testator's Securities for Money.—Bequest of Securities for Money to Trustees, Upon Trust to pay Annuity to Testator's Daughter for Life, for her separate Use, without Power of Anticipation; and pay Annuity to Testator's Cousin for Life; and, subject thereto, in Trust for Testator's Wife during Widowhood; and after her Death or Marriage, Upon Trust to raise Legacies first bequeathed, and also to raise a Sum of Money In Trust*

for S. S., a Daughter of Testator, and her Issue; and, subject thereto, Upon Trust, after the Death or Marriage of Testator's Wife, to raise £——, Upon Trust for certain of Testator's Children, as Testator's Wife should, during Widowhood, appoint; and, in default of Appointment, In Trust, as to the said £——, and also the Residue of Trust-Monies, for certain of Testator's Daughters.—Devise of certain Real Estates, In Trust for Testator's Wife during Widowhood; and afterwards, In Trust for Testator's Son E. F. and his Issue in Tail Male; Remainder to Trustees, Upon Trust for Sale.

THIS IS THE LAST WILL of me, A. B., of &c. I BEQUEATH unto my dear wife C. D. all my personal estate of what nature soever (except monies, stocks, funds, shares, or securities for money); And I hereby, as far as I can, exempt my personal estate, so bequeathed to my said wife as aforesaid, from the payment of my debts, funeral and testamentary expenses, and the legacies and charges hereinafter given and created. I BEQUEATH unto my said son E. F. the sum of £——, to be paid to him at his age of twenty-one years. AND I DIRECT, that it shall be lawful for the said trustees or trustee for the time being of the fund hereinafter provided for payment of the said legacy, with the consent in writing of

Bequest of all personal estate, except securities for money, to testator's wife, discharged from payment of debts, &c.

Legacy to son, to vest at 21, with interest.

Advancement clause.

my said wife during her life, and after her death at the discretion of my said trustees or trustee for the time being, to raise any part or parts of the said sum of £——, and apply the same for his advancement or benefit. AND I DIRECT, that the said trustees or trustee shall apply the whole, or such part as they or he shall think fit, of the annual income of the said sum of £——, or of the stocks, funds, or securities upon which the same shall be invested, for or towards the maintenance or education of the said E. F., either directly or to his guardian or guardians, without seeing to the application thereof or requiring any account of the same. BUT in case the said E. F. shall die under the age of twenty-one years, then I BEQUEATH the said sum of £——, or so much thereof as shall not have been applied pursuant to the powers aforesaid, unto such of my daughters, G. H., I. K., and L. M., as shall be living at my death, equally to be divided between them, if more than one. BUT, in the event of the death of my said son E. F. under twenty-one years, I DIRECT that the payment of the said legacy of £——, or so much thereof as shall not have been applied for his benefit or advancement as aforesaid, shall be postponed until the death or marriage of my said wife, And that no interest shall be payable thereon from the decease of my said son E. F. under the age of twenty-one years during the widowhood of my said wife. AND I BEQUEATH to my said son E. F. the sum of £—— in addition to the said legacy hereinbefore

Maintenance clause.

On the death under 21 of the said E. F., in trust for testator's daughters, G. H., I. K., and L. M., in equal shares.

The payment to be postponed to the death or second marriage of testator's wife.

Bequest of a further legacy to testator's son, to vest.

bequeathed to him. AND I DIRECT that the said legacy of £——, hereby lastly bequeathed to him, shall be an interest vested in him at his age of twenty-four years, and shall be paid to him at that time, if the same shall happen after the death or marriage of my said wife; But if the same shall happen during her widowhood, then the raising and payment of the said last-mentioned legacy of £—— shall be postponed till after the death or marriage of my said wife, whichever shall first happen (*a*). BUT in case my said son E. F. shall die under the age of twenty-four years, then I BEQUEATH the said last-mentioned legacy unto such of my said daughters hereinbefore named as shall be living at my death, equally to be divided between them if more than one; But I DECLARE that the payment thereof shall be postponed until the death or marriage of my said wife, whichever shall first happen; AND I DIRECT that the said last-mentioned legacy of £—— shall not carry interest until the same shall become payable under the directions aforesaid. I BEQUEATH unto each of my said three daughters, G. H., I. K., and L. M., the sum of £——; And

at 24, but to be postponed as aforesaid.

If he die under 24, to testator's daughters equally

payment to be postponed as before.

Bequest of legacies to daughters:

(*a*) In bequests to vest at an age later than twenty-one, care should be taken not to transgress the rules as to the period during which accumulation is permitted. The general rule is, that the vesting of property may be suspended, and its produce accumulated, for an absolute period of twenty-one years, and for no greater number of years.

I DIRECT that each of my said daughters shall have a vested interest in her legacy of £—— immediately upon my death; But the payment thereof, and without interest in the meantime, shall be postponed till after the death or marriage of my said wife. PROVIDED ALWAYS, that in case any of my said three daughters hereinbefore named shall marry during the widowhood of my said wife, with the consent of her or their guardian or guardians for the time being, then it shall be lawful for the trustees or trustee for the time being of the trust fund hereinafter provided for the payment of the said several legacies of £—— each, during the widowhood of my said wife, with her consent in writing, to raise for and pay to each such daughter so marrying as aforesaid one half part of her said legacy of £—— for her own use. AND I BEQUEATH unto my brother M. N., of &c., the sum of £——, to be an interest vested in him immediately after my death; But the payment thereof, without interest in the meantime, to be postponed till after the death or marriage of my said wife. AND I BEQUEATH unto X. Y., of &c., and Y. Z., of &c., the sum of £—— each, free from legacy duty, if they shall respectively act in the execution of the trusts of this my will, for the care and trouble which they will respectively be at in or about the execution of the trusts hereinafter in them reposed. AND I DEVISE all my real estates not hereinafter by me devised, and except estates vested in me as a trustee or mortgagee, to the use of the said

payment to be postponed as aforesaid.

But if daughters marry with consent, trustees may advance a moiety of their legacies during the widowhood of testator's wife.

Bequest of legacy to a brother:

payment to be postponed.

Bequest to executors.

Devise of real estates to trustees.

X. Y. and Y. Z., their heirs and assigns, for ever, UPON TRUST that they the said X. Y. and Y. Z., or the survivor of them, or the heirs or assigns of such survivor, (hereinafter called the trustees or trustee,) shall, with all convenient speed after my death, sell my said real estate so to them devised as aforesaid; (*Trust for sale*, *p.* 226); And shall, out of the monies to arise by such sale or sales, pay my debts, funeral and testamentary expenses, and the legacies hereinbefore bequeathed to the said X. Y. and Y. Z. respectively; And shall invest the residue of the said monies, in the names or name of the said trustees or trustee, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England or Wales (but not in Ireland), with power to alter or vary the said stocks, funds, or securities at pleasure; And shall hold the monies to arise by such sale or sales as aforesaid, and the stocks, funds, or securities upon which the same shall be invested, upon the trusts hereinafter declared concerning the same.

In trust to sell.

and pay debts, and funeral expenses and legacies,

and invest the surplus,

and stand possessed thereof upon trusts after declared.

AND I BEQUEATH all my ready money, and all monies in the funds, and all monies owing to me and the securities for the same, and all my shares and stock in railway or other companies, unto the said X. Y. and Y. Z., their executors, administrators, and assigns, upon the trusts hereinafter declared concerning the same: I HEREBY DIRECT, that the said X. Y. and Y. Z., their executors, administrators, and assigns, shall hold the monies to arise from such sale or sales as

Bequest of all stock, &c. to trustees,

aforesaid, and the stocks, funds, or securities in or upon which the same shall be invested, and also the monies, stocks, and securities hereinbefore bequeathed to them, UPON TRUST that the said trustees or trustee shall, during the life of my daughter F. A., out of the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities, pay an annuity of £—— per annum to the said F. A., by half-yearly payments, upon the twenty-fourth day of June and the twenty-fifth day of December in each year, for her separate use, independent of any husband of the said F. A., and without being subject to his debts, control, or engagements, but so that the said F. A. shall not have power to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise in the way of anticipation; And UPON TRUST, that they the said trustees or trustee shall, out of the said interest, dividends, and annual produce, during the life of my cousin E. R., pay an annuity of £—— per annum, by half-yearly payments, on the days and times hereinbefore mentioned in respect of the said annuity of £——, unto the said E. R. and her assigns, for her and their own use; And, subject to the payment of the said several annuities, UPON TRUST that the said trustees and trustee shall permit my said wife to receive the interest, dividends, and annual produce of the said trust-monies, stocks, funds, and securities during her life, in case she shall so long continue unmarried, but subject and without prejudice to

in trust, out of the interest, &c., to pay annuity to testator's daughter for life,

for her separate use, without power of anticipation;

and to pay an annuity to testator's cousin E. R., for life;

and, subject thereto, to permit testator's wife to take the interest, &c. during her widowhood.

the raising and paying during her widowhood of the said legacy of £—— hereinbefore firstly bequeathed to my said son E. F., upon his attaining the age of twenty-one years or for his advancement; And after the death of my said wife or her marriage, which shall first happen, UPON TRUST, that the said trustees or trustee for the time being shall, out of the said trust-monies, stocks, funds, or securities (but without prejudice to the aforesaid annuities of £—— and £——), raise so much money as will be sufficient to pay the said several legacies hereinbefore by me bequeathed and made payable after the death or marriage of my said wife as aforesaid, at the respective times and in manner hereinbefore appointed for payment thereof; And shall, out of the said trust-monies, stocks, funds, and securities, raise the sum of £——, and lay out the same, in their or his names or name, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England or Wales, IN TRUST for my daughter S. S. the wife of J. S., of ——, Esquire, during her life, for her separate use, independent of the debts, control, or engagement of her present or any future husband, and shall permit her or them to receive the interest, dividends, and annual produce thereof accordingly; And after her death, IN TRUST for such daughter or daughters of my said daughter S. S. as shall be living at her death, equally to be divided between them if more than

After death or marriage of wife, to raise and pay the legacies first bequeathed.

And by sale or transfer raise £——, and invest the same,

in trust for testator's daughter S. S., for her life and separate use.

After her death, in trust for her daughters.

In default of daughter, in trust for testator's first-named three daughters then living, and the children of such as shall be then dead, equally;

one; And in case no daughter of the said S. S. shall be living at her death, then IN TRUST for the said G. H., I. K., and L. M., or such of them as shall be living at the death of the said S. S., and the issue of such of them as shall then be dead leaving issue, if more than one equally to be divided between them, share and share alike, the issue of such of my said three first-mentioned daughters as shall then be dead leaving issue being only to take the share which their respective parents would have then taken if then living;

and subject thereto, upon trust, after death or second marriage of testator's wife, to raise £5000,

And subject to the raising and paying of the said several annuities and legacies, UPON TRUST that the said trustees or trustee shall, after the death or marriage of my said wife, which shall first happen after my death, raise the sum of £——, or so much thereof as the said trust-monies, stocks, funds, and securities shall be sufficient to raise, and shall pay the same sum of £——, or so much thereof as shall be produced by the said trust-monies, stocks, funds, and securities as aforesaid, unto and amongst all and every or such one or more exclusively of the others or other of my said son E. F. and my said three daughters G. H., I. K., and L. M., at such times, and in such proportions, and with such restrictions and limitations over, such limitations over being for the benefit of some one or more of my said last-named son and daughters, as my said wife, at any time during her widowhood, by deed with or without power of revocation and new appointment, or by her will or codicil, shall ap-

and pay the same to testator's son and three daughters,

in such manner as testator's wife during widowhood shall appoint.

point (*b*); And in default of such appointment, or so far as no such appointment shall extend, then, as to the said sum of £——, or so much thereof as to which no such appointment shall extend, As also as to the surplus (if any) of the said trust-monies, stocks, funds, and securities, after the purposes aforesaid shall be answered, UPON TRUST that the said trustees or trustee shall hold the same in trust for my said son E. F. and my said daughters G. H., I. K., and L. M., or such of them as shall be living at my death, and the issue of such of them as shall be then dead leaving issue, equally to be divided between them if more than one, the issue of such of them as shall be then dead to take the shares which their respective parents would have taken if then living. AND I DIRECT, that, in case the monies to arise by the sale of my real estates and from my ready money, and stocks, funds, and securities, shall not, after payment thereout of my debts, funeral and testamentary expenses, be sufficient to pay the whole of the several legacies and annuities hereinbefore directed to be paid

As to the £5000. in default of appointment.

and also the surplus of trust-monies, in trust for testator's son and three daughters.

Direction as to which legacies ought to abate in the event of there not being sufficient to pay them all in full.

(*b*) It is not desirable to require a power of appointment by deed to be executed in any particular manner; such requisition is not to be depended on to prevent hasty appointments, and it is always liable to render void an appointment every way desirable. The direction, that the appointment must be executed by deed, renders it improbable that any informal or hasty document should ever be set up as an execution of this power.

thereout, then the several legacies of £—— hereinbefore bequeathed by me to my son E. F., the said legacies of £—— apiece to my said first-named daughters, the said legacy of £—— to or in trust for my said daughter S. S. and her daughters, shall respectively abate in proportion to the respective amounts thereof. AND I DEVISE all my estate of ——, and all other my real estate in the parishes of —— and ——, in the county of ——, to the use of the said X. Y. and Y. Z., their executors, administrators, and assigns, during so long as my said wife shall live and continue my widow, UPON TRUST, that the said trustees or trustee shall permit my said wife and her assigns, during her widowhood, to receive the rents and profits of the said last-mentioned premises for her and their own use; And, after the death or marriage of my said wife, which shall first happen, to the use of my said son E. F. and his assigns during his life, without impeachment of waste, With remainder to the use of the first and every other son of the said E. F., severally and successively, according to their respective seniorities, in tail male; And in default of such issue, to the use of the said X. Y. and Y. Z., their heirs and assigns, UPON TRUST that the said X. Y. and Y. Z., or the survivor of them, or the heirs or assigns of such survivor, shall, as soon as conveniently may be, sell the said last-mentioned premises, either together or in parcels, by public auction or private contract, with full power to buy in and rescind any con-

Devise of certain real estates to trustees,

in trust to permit wife to receive rents during her widowhood.

After death or second marriage, remainder to testator's son E. F., for life;

remainder to his sons in tail male;

remainder to trustees in trust to sell,

tract for sale, and to resell, without being responsible for any loss occasioned thereby, and to do all such acts and assurances for effectuating such sale as they or he shall think fit; And shall hold the monies to arise from any such sale in trust for my said three daughters, G. H., I. K., and L. M., equally to be divided between them, share and share alike. (*Trusts during minority of devisees, supra, p.* 280.—*Power of leasing, supra, p.* 253.—*Power of sale and exchange, supra, p.* 254.—*Devise of mortgage estates, supra, p.* 194).

and stand possessed of sale money in trust for testator's three daughters equally:

I APPOINT the said X. Y. and Y. Z. executors of this my will; and authorise the acting executors &c. (*Power to arrange and compromise, p.* 195). AND I HEREBY DECLARE, that the receipts or receipt in writing of the trustees or trustee for the time being, &c. (*Trustees' receipt clause, p.* 195. —*Power to appoint new trustees; Trustees' indemnity clause, p.* 196). IN WITNESS &c.

Appointment of executors, with power to arrange and compromise.

Trustee clauses.

No. XX.

WILL *exercising a Power of Appointment in a Marriage Settlement, and also Powers of charging Portions for younger Children.—Appointment of Portion to a Married Daughter, and Appointment of the Residue of the Sum authorised to be charged among Testator's other younger Children equally.—Maintenance Clause.—Appointment of Guardians.*

Recital of settlement under which testator has power of appointing portions.

THIS IS THE LAST WILL of me, A. B., of &c. WHEREAS, under an indenture of release, dated the —— day of ——, grounded on a lease for a year, and expressed to be made between [*parties*], being the settlement made on my marriage with my late wife, certain estates in —— and elsewhere, known as the —— estates, stand limited in remainder expectant upon my death to the trustees therein named, for the term of —— years, with divers remainders over; and the said term of —— years was, by the said indenture of release, declared to be limited to the said trustees, upon trust, in case there should be one or more child or children of me by my said late wife, who should be living at the time of my death (except

an eldest or only son), to raise, if but one such child, the sum of £——; if two or more such children, the sum of £——; and if three or more such children, the sum of £——, for the portion or portions of such child or children, to be paid to and divided between them if more than one, in such parts, shares, and proportions as my said late wife and myself should jointly appoint; and in default of such joint appointment, as I, in case I survived my said late wife, should by deed or will appoint; And by the same indenture the same trustees were authorised, under the trusts of the same term, to raise such yearly sums of money, not exceeding the interest at £— per cent. on the said portions respectively, as my said late wife and myself should jointly, in manner aforesaid, direct or appoint; and in default of such joint appointment, as I, in case I survived my said late wife, should, in manner aforesaid, direct or appoint, for the maintenance and education of such child or children, from the time of my death till the said portions should respectively become due as aforesaid (*a*); AND WHEREAS there

Recital of issue of tes-

(*a*) To avoid all disputes as to the intention of the testator, the instrument creating the power to be exercised should be carefully examined, and the will should, of course, be framed in strict accordance with the power. It will generally be found expedient, as in the text, shortly to recite the instrument creating the power to be exercised. If the power be to be exercised by deed or

tator's said marriage;

is issue of the said marriage between myself and my said late wife —— children besides my eldest son C. D.; AND WHEREAS my said late wife and myself never exercised the joint power of appointment given to us as hereinbefore is mentioned; and I have never exercised the said power of appointment so given to me as the survivor of my said wife, as hereinbefore is mentioned: Now I the said A. B., by force and virtue and in exercise of the said power and authority so given and reserved to me, do, by this my will, direct and appoint the sum of £—— to be raised immediately after my decease out of the said estates, under the trusts of the said term of —— years, and to be paid to my daughter E. F., the wife of ——, her executors, administrators, or assigns, as and for the part or proportion of her the said E. F. of or in the sum or sums of money by the trusts of the said term of —— years directed to be raised for the portions of my younger sons and daughters by my said late wife; AND that the remaining part of the said principal sum of money, to be raised under the trusts of the said term of —— years for the portions of my younger sons and daughters by my said late wife, shall be

—that the joint powers of appointment have never been exercised.

Appointment of £—— to a married daughter;

—and of the residue among testator's other daughters and younger sons equally,

writing executed in a particular way, and no mention is made in the power of execution by will, the will should be executed in the manner required by the instrument creating the power.

divided between my other children (other than and except an eldest or only son) living at my death, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age, or marry under that age with the consent of her or their guardian or guardians; And if there should be but one such child, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry with such consent as aforesaid, then the whole to be in trust for such one child. AND I DIRECT AND APPOINT, that the said trustees or trustee for the time being of the said term of —— years, shall raise for my said children, from the time of my decease till they shall respectively become entitled to their said portions in the said sums of money, any yearly sum the said trustees or trustee shall think proper, not exceeding the yearly sum of £—— for each of them in the meantime, for their maintenance and education, and shall either apply the same for the benefit of such child, or shall pay the same to the guardian or guardians of such child, without being bound to see to the application thereof, or to give any account as to the application thereof. And if any of my children shall depart this life before they shall respectively attain a vested interest in the share appointed and devised to them of the sums of money so directed to be raised under the trusts of the said term of —— years, then the share or

Maintenance clause.

shares of him or them so dying shall go to or be equally divided between the survivors and survivor of them, and be again subject to the same rights or conditions of accruer and survivorship.

Appointment of guardians, —of executors.

AND I APPOINT C. D., of &c., and E. F., of &c., guardians of my infant children. AND I APPOINT the said C. D. and E. F. executors of this my will. IN WITNESS &c.

No. XXI.

WILL *of* REAL *and* PERSONAL ESTATE.—*Devise of Real Estate, subject to Mortgage Debts.—Bequest of Legacies.—Devise and Bequest of Residuary Real and Personal Estate to Trustees, upon Trust to sell and convert into Money, and to hold the Money to arise from such Sale and Conversion in Trust, as to one Moiety, for Testator's Wife for her Life, and after her Death for Testator's Sons, in equal Shares; and as to the other Moiety, in Trust for Testator's Daughters and their Issue in equal Shares.*

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I DEVISE all my estate of ——, in the parish of ——, in the county of ——, TO THE USE of my son C. D., his heirs, and assigns, subject to the several mortgage debts secured thereon. AND I DECLARE, that the said estate of —— shall be charged with the payment of all mortgage debts charged thereon, in exoneration of all my other property, whether real or personal (*a*).

Devise of property subject to mortgages.

(*a*) In devising property subject to mortgages, the change in the law, occasioned by the Act 17th and 18th

Bequest of legacies.

I GIVE to my dear wife my carriage and horses, and all my wine, liquors, provisions, and stores, and all my plate, plated articles, china, watches, jewels, trinkets, and works of art, except pictures. I GIVE to my said wife the sum of £——, to be paid to her within one month after my death. I GIVE to each of my daughters the sum of £——, to be vested and to become payable at their respective ages of twenty-one years or days of marriage, which shall first happen, but without interest in the meantime. AND as to all the residue of my real and personal estate, I DEVISE and BEQUEATH the same unto X. Y., of &c., and Y. Z., of &c., their heirs, executors, administrators, and assigns, UPON TRUST that the said X. Y. and Y. Z., or the survivor of them, or the heirs of such survivor, shall, as soon as convenient after my death, sell my said residuary real estate, either by public auction or private contract, with full power to buy in and rescind any contract for the sale thereof, and to resell without being responsible for any loss occasioned thereby, and to do all such acts and assurances for effectuating

Devise and bequest of residue to trustees upon trust to sell.

Vict. c. 113, should be borne in mind. By that Act real estate charged with the mortgage debt is made primarily liable in the hands of an heir or devisee to the payment of the mortgage debts charged thereon, unless the person dying seised or entitled to such real estate shall have signified any contrary or other intention; to preclude any question it may be well to declare distinctly the testator's intention as in the text.

any such sale as they or he shall think fit, and with full power to make any stipulation as to title or evidence of title which they or he shall think fit; AND shall sell, call in, and convert into money such part of my said personal estate as shall not consist of money. AND I DECLARE, that the said X. Y. and Y. Z., or the survivor of them, and the heirs, executors, or administrators of such survivor, shall, out of the monies to arise from such sale, calling in, and conversion into money, and out of my ready money, pay my funeral and testamentary expenses, and the legacies given by this my will or any codicil hereto, and all my debts, except such as are secured by mortgage of my said real estates in ——; And shall invest the residue of the said monies in the names or name of the said X. Y. and Y. Z. or the survivor of them, or the executors or administrators of such survivor (hereinafter called the trustees or trustee), in or upon any of the public stocks or funds of Great Britain, or at interest upon Government or real securities in England, with power for the said trustees or trustee to vary the said stocks, funds, and securities at discretion; And shall pay the interest, dividends, and annual produce of one moiety of the said trust-monies, stocks, funds, and securities to, or permit the same to be received by, my said wife and her assigns for her life; and, after the death of my said wife, shall hold the said moiety in trust for all my sons or son, other than the said C. D., who shall attain twenty-one years, to be divided among

—call in, and convert into money;

—pay funeral and testamentary expenses and legacies;

—and invest the money so to be produced.

Trusts of one moiety for testator's wife for her life.

And after her death for sons other than C. D. at 21.

them, if more than one, in equal shares; and if there shall be but one such son, the whole to be in trust for that one son; and if there shall be no son of mine, except the said C. D., who shall attain twenty-one years, then in trust for the said C. D., his executors, administrators, and assigns. AND I DECLARE, that the said trustees or trustee shall hold the other moiety of the said trust-monies, stocks, funds, and securities, UPON TRUST for all my daughters or any my daughter who shall attain twenty-one years or marry, equally to be divided between them if more than one, and if there shall be but one such daughter, the whole to be in trust for that one daughter. AND I DECLARE, that the share of each such daughter in the said trust premises shall be held by my said trustees or trustee, UPON TRUST that they or he shall, during the life of each such daughter, pay the interest of her said share into her proper hands, for her separate use, independent of any husband, but so that such daughter shall not have power to deprive herself thereof by sale, mortgage, charge, or otherwise, by way of anticipation; And after the death of each such daughter, IN TRUST for all the children or any the child of such daughter, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one, in equal shares. AND if there shall be no child of any such daughter, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that

Trusts of other moiety for daughters.

Declaration, that the shares of daughters shall be held upon trust to pay the interest to such daughters, for life, for their separate use, without power of anticipation;

—and after each daughter's death, in trust for her children, in equal shares;

—in default of issue, upon such trusts as each daughter shall appoint;

age or marry, then, after the death of such my daughter and such failure of issue as aforesaid, the share of such daughter, and the interest thereof, shall be held upon such trusts and in such manner as such daughter, whether covert or sole, shall, by deed with or without power of revocation and new appointment, or by will or codicil, appoint; And, in default of such appointment, in trust for the executors or administrators of such my daughter. PROVIDED always, and I HEREBY DECLARE, that it shall be lawful for each of my said daughters, notwithstanding coverture, to appoint by will or codicil that all or any part of the interest of her share, whether original or accruing, in the said trust premises, shall be paid to her husband during his life, or for any less period. (*Advancement, maintenance, and accumulation clauses, supra, pp.* 192, 193 (*b*). *Devise of mortgage estates, supra, p.* 194). I APPOINT my said wife and the said X. Y. and Y. Z. guardians of my infant children. I APPOINT the said X. Y. and Y. Z. executors of this my will; and authorise &c. (*Power for executors to arrange and compromise, supra, p.* 195.—*Trustee clauses, supra, pp.* 195, 196, 197.) IN WITNESS &c.

—and in default of appointment, for the executors or administrators of such daughter.

Power for daughters to appoint the interest of their shares to their husbands for life.

Advancement, maintenance, and accumulation clauses.

Devise of mortgage estate.

Appointment of guardians;

—of executors, with power to arrange and compromise.

Trustee clauses.

(*b*) It will be observed, that the powers given by this precedent to the testator's daughters over their shares are less extensive than those in Precedent VIII. If the property in question be small, it may be advantageously settled, as in the text; if considerable, it will probably be thought expedient to insert the power of settlement on marriage contained in Precedent VIII.

No. XXII.

CODICIL DEVISING COPYHOLDS *for* SALE. —*Hotchpot Clause as to certain Sons who have received Advances in the Testator's Lifetime.*

I, A. B., of &c., DO DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——. I DEVISE all my copyhold estates to such uses, upon such trusts, and with and subject to such powers, provisoes, and declarations, as X. Y., of &c., and Y. Z., of &c. (*a*), or the survivor of them, or the executors or administrators of such survivor, shall by deed appoint. AND in default of and until such appointment and so far as such appointment shall not extend, TO THE USE of the said X. Y. and Y. Z., their heirs and assigns, according to the custom of the manors of which the same premises are respectively holden, at and under the rents, fines, heriots, suits, and services therefore due and of right accustomed. AND I DECLARE, that the said power of appointment hereby limited to the said X. Y. and Y. Z., and the estate devised to them, their heirs and assigns, in default of appointment, was so limited

(*a*) These trustees should be the same as the trustees of the testator's will.

and devised, UPON TRUST that the said X. Y. and Y. Z., or the survivor of them, or the heirs, executors, or administrators of such survivor, shall, as soon as convenient after my death, sell the said copyhold premises, either together or in parcels, and either by public auction or private contract, with full power to buy in and rescind any contract for sale, and to resell, without being answerable for any loss to be occasioned thereby, and to do all such acts and assurances for effectuating any such sale as they or he shall think fit; and shall hold the monies to arise from such sale upon the trusts hereinafter declared concerning the same (*b*). AND WHEREAS I have advanced to my son C D. the sum of £——, and to my son E. F. the sum of £——: NOW I HEREBY DECLARE, that the said X. Y. and Y. Z., or the survivor of them, or the heirs, executors, or administrators of such survivor, shall hold all the money received from the sale of the said copyhold premises hereinbefore devised, UPON TRUST for all my sons or any my son, equally to be divided between them if more than one, and their

Upon trust for sale.

Recites advances to some of testator's sons.

Trusts of purchase-money for testator's sons equally.

(*b*) The object to be gained by devising copyholds to such uses as the trustees shall appoint, is to save the expense of the admittance of the trustees, as a purchaser would be entitled to be admitted under the will, if he claimed to be so before the third court held after the death of the testator. After that time, if the property be not then sold, the lord can compel the devisees under the will to be admitted.

respective executors, administrators, and assigns.

Hotchpot clause as to certain sons who have received advances.

AND I DECLARE, that the said E. F. and G. H. shall not be entitled to any share in the said trust-monies without bringing the respective sums hereinbefore recited to have been advanced to them into hotchpot, and accounting for the same accordingly.

Rents and profits till a sale to be equally divided among testator's sons;

AND I HEREBY DIRECT, that, until a sale of the said copyhold premises, the said X. Y. and Y. Z., or the survivor of them, or the heirs, executors, or administrators of such survivor, shall divide the rents and profits of the same premises equally among my said sons, if more than one, but, nevertheless, deducting from the shares of the said C. D. and E. F., respectively, interest at the rate of £— per cent. per annum on the said sums hereinbefore recited to have been advanced to them. And in all other respects I confirm my said will. IN WITNESS &c.

—deducting interest on the sums advanced.

No. XXIII.

WILL *of* REAL *and* PERSONAL PROPERTY. *—Directions as to Burial.—Direction as to Payment of Debts and Legacies.—Devise and Bequest of Estates and Effects in ——.—Devise of an Estate in Fee.—Devise of Chambers —Bequest of £10,000 Consols, in Trust for Testator's Sister for Life, and, after her Death, for her Daughters.—Bequest of a Sum of Money, in Trust for the Widow and Children of Testator's Brother.—Bequests of Legacies.—Devise and Bequest of Residue.—Devise of Mortgage Estates.—(Usual Clauses).*

THIS IS THE LAST WILL of me, A. B., of &c. I DESIRE that I may be buried in the burial-ground nearest to the place where I may happen to die, and that my funeral may be conducted with as little expense as may be consistent with decency. I DIRECT that all my debts, and funeral and testamentary expenses, and all the legacies and bequests hereinafter by me given, may be paid by my executors out of my personal estate. I DEVISE and BEQUEATH unto my brother

Directions as to burial.

As to payment of debts and legacies.

Devise and

bequest of estate and effects in ——.

C. D., his heirs, executors, administrators, and assigns, all and singular my real and personal estate and effects in ——, for his and their own use and benefit.

Devise of an estate in England.

I DEVISE unto my nephew E. F., (son of my late brother G. H., deceased), his heirs and assigns, for ever, all my farm and lands called ——, situate in the county of ——, with the appurtenances.

Devise of a set of chambers.

AND I GIVE and DEVISE unto my nephew J. K., (fourth son of my said brother C. D.), and his heirs, all my set of apartments or chambers in ——, in the county of ——, with the appurtenances.

Bequest of £10,000 Bank Annuities to trustees, upon trust for the benefit of the testator's sister, for life;

AND I GIVE and BEQUEATH unto my said brother C. D., my said nephew J. K., M. N., of &c., and O. P., of &c., their executors, administrators, and assigns, the sum of £10,000, 3 per Cent. Consolidated Bank Annuities, UPON TRUST that they the said C. D., J. K., M. N., and O. P., and the survivors and survivor of them, and the executors and administrators of such survivor, their and his assigns, shall either permit the said sum of £10,000, 3 per Cent. Consolidated Bank Annuities, to remain in its actual state of investment, or shall at any time or times during the life of my sister E. L. G., widow of C. G., sell the same, or any part thereof, and invest the money to arise thereby, in their or his names or name, in any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales (but not in Ireland); and shall, from time to time, vary the same stocks, funds, or securities, as to them or him shall seem meet, yet so

that during the life of the said E. L. G. every such sale, laying out, or variation, shall be made with her consent in writing; and shall pay the interest, dividends, and annual produce of the said trust-monies, stocks, funds, or securities, to the said E. L. G. and her assigns, during her life; And, after the death of the said E. L. G., shall hold the said trust-monies, stocks, funds, and securities, in trust for all and every the daughters and daughter of the said E. L. G. living at the time of her death, who shall not then be or have been married, to be divided between or among them, if more than one, in equal shares; and if there shall be but one such daughter, the whole to be in trust for that one daughter. AND if there shall be no daughter of the said E. L. G. living at the time of her death, who shall not then be or have been married, then in trust for all and every the daughters or daughter of the said E. L. G. living at the time of her death, who shall then be or have been married, to be divided between or among them, if more than one, in equal shares; and if there shall be but one such daughter, then the whole to be in trust for that one daughter(*a*). I BEQUEATH to the said C. D., J. K., M. N., and O. P., the sum of £1,000, IN

—and, after her decease, to her unmarried daughters, equally.

In default of daughters unmarried, to daughters married.

Bequest of a sum of money to

(*a*) See settlement of the shares of daughters, ante pp. 228, 229, and 230, and note (*c*), page 229, and note (*d*), page 230. If the property be considerable, it will frequently be thought advisable to insert the provisions referred to, which should be done in this part of the will.

trustees, for the benefit of the widow and children of testator's brother.

TRUST that they and the survivors and survivor of them, and the executors and administrators of such survivor, their and his assigns, shall lay out the said sum of £1,000 in any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England or Wales, (but not in Ireland); and shall, from time to time, alter, vary, and transpose the same stocks, funds, and securities, as to them or him shall seem meet, yet so that during the life of M. A. B. (the widow of my late brother, the Reverend C. B., deceased), every such alteration, variation, or transposition shall be made with her consent in writing; and shall pay the interest, dividends, and annual produce of the said sum of £1,000, and of the stocks, funds, and securities in or upon which the same shall be laid out or invested to the said M. A. B., and her assigns during her life; And after the death of the said M. A. B. shall hold the said sum of £1,000, and the stock, funds, or securities in or upon which the same shall be laid out or invested, IN TRUST for all and every the children and child of my said brother C. B., living at the death of the said M. A. B., in equal shares, and if there shall be but one such child, the whole to be in trust for that one child. I BEQUEATH to E. F. F., son of the said E., F. the sum of £——; and if the said E. F. F., shall not have attained the age of twenty-one years when his said legacy shall become payable, I DIRECT the same to be paid to his father, to be managed by him in such manner as shall seem to

him most for the benefit of his said son, till he shall attain the age of twenty-one years; and in such case the receipt of the said E. F. for the said sum of £—— to be a sufficient discharge for the same (*b*). I GIVE and BEQUEATH one year's wages to my servant W. W., if he shall be in my service at my death. I BEQUEATH unto T. T., of &c., my French travelling-case of plate. I BEQUEATH one of my snuff-boxes to each of my nephews, A. B. and G. B., to be chosen by them from my snuff-boxes, the eldest of my said nephews to choose first. I BEQUEATH to A. D., wife of the said C. D., the silver coffee-pot given to me by ——, with the teapot and cream jug that I had made to match it (*c*). I DEVISE and BEQUEATH to my said nephew S. B., his heirs, executors, administrators, and assigns, all the residue of my real and personal estate and effects not hereinbefore specifically devised or bequeathed, (except estates vested in me upon any trusts or

Gift of residue.

(*b*) See note (*b*), page 212.

(*c*) The attention of testators should be called to the necessity, in bequeathing specific articles, of describing them in such a manner as to remove all cause of doubt as to the identity of the articles intended to be so bequeathed. They should never be described only by reference to the place where they are, as, if afterwards removed in the testator's lifetime, a question may arise as to the sufficiency of the bequest. It need scarcely be repeated here, that, as the will speaks as if from the testator's death, any mode of description should be avoided which is likely to apply to after-acquired property, which the testator does not desire to include in the bequest.

by way of mortgage), for his and their absolute use and benefit. I DEVISE to the said C. D., J. K., M. N., and O. P., their heirs, executors, administrators, and assigns, all estates vested in me by way of mortgage, subject to the equity of redemption subsisting therein respectively; but the money to be secured on such mortgages to be considered as part of my personal estate. AND I HEREBY APPOINT the said C. D., J. K., M. N., and O. P., executors of this my will. AND I DECLARE, that every receipt in writing of the said C. D., J. K., M. N., and O. P., and the survivors and survivor of them, and the executors and administrators of such survivor, for any money payable to them or him under or by virtue of this my will, or in or about the execution of the trusts hereby declared, shall be a good and effectual release for the money therein respectively acknowledged to be received, and shall, to all intents and purposes, discharge the person or persons taking such receipts therefrom or from seeing to the application or being accountable or answerable for the misapplication or nonapplication of the same or any part thereof. AND I hereby authorise my said executors or executor to pay any debts owing by me or claimed from me upon any evidence they or he shall think proper, and to accept any security, real or personal, for any debt or debts owing to me, and also to allow such time for the payment thereof as to them or him shall appear reasonable. (*Power to appoint new trustees; Trustees' indemnity clause, pp.* 195, 196, 197.) IN WITNESS &c.

Devise of mortgage estates.

Appointment of executors.

Declaration that the receipts of trustees shall be discharges.

Power for trustees to compound.

Trustee clauses.

No. XXIV.

CODICIL *revoking a Devise in favour of an illegitimate Child, and limiting a Term to Trustees to raise an Annuity for his Benefit until Bankruptcy or Insolvency, or until he dispose of the same, upon Condition that he cease to use the Testator's Name.—Bequest of a Vase as an Heirloom.*

I, A. B., of &c., DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——. I REVOKE the estate or use by my said will devised or limited to G. H. and I. K. for the term of 500 years, and the trust by my said will declared of the same term. AND I DEVISE all the real estate, by my said will devised or limited to the said G. H. and I. K., for the said term of 500 years, to the use of C. D., of &c., E. F., of &c., for the term of ninety-nine years from my death, without impeachment of waste, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, hereinafter declared concerning the same; and after the expiration or sooner determination of the said term of ninety-nine years, and in the meantime subject thereto and to the trusts thereof, TO THE USES, upon and for the trusts, intents,

Limitation of a new term to other trustees.

and purposes, and with, under, and subject to the powers, provisoes, and declarations in and by my said will limited, expressed, or declared concerning the same, other than the said term of 500 years and the trusts thereof (*a*). AND I DECLARE, that the said C. D. and E. F., their executors, administrators, and assigns, shall stand possessed of the said premises, hereinbefore devised to them for the said term of ninety-nine years, UPON TRUST that the said C. D. and E. F., and the survivor of them, and the executors, administrators, and assigns of such survivor, (hereinafter called the trustees or trustee), shall, during the life of W. Y. B., of &c., out of the rents and profits of the said premises comprised in the said term of ninety-nine years, raise the annual sum of £——, free from all deductions; and shall, from time to time, during the life of the said W. Y. B., or until he shall make any sale, assignment, or charge of or upon or which may affect the said annual sum of £—— or any part thereof, or be-

Declaration of trust of new term;

—to pay annuity to or for the benefit of the natural son, without power of anticipation.

(*a*) This precedent assumes that the limitation of the term of 500 years, thereby revoked, was the first limitation in the testator's will; and, in such a case, the alteration in the text may be advantageously made by codicil; but, if the devise intended to be revoked be either contingent or to take effect in remainder, great care will be necessary lest the order of limitations, intended to be established by the will, be interfered with; and it will not unfrequently be found more desirable to frame a new will embodying in it the proposed alterations.

come bankrupt or take the benefit of any act for the relief of insolvent debtors, or do any other act whereby the same would or might, if hereby given absolutely to or in trust for him, be forfeited to or become vested in any other person or persons, pay the said annual sum of £—— to, or permit the same to be received by, the said W. Y. B., by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on such of the said days of payment as shall happen next after my decease. But, in case the said W. Y. B. shall make any sale, assignment, or charge of or upon or which may affect the said annual sum of £—— or any part thereof, or become bankrupt or take the benefit of any Act for the relief of insolvent debtors, or shall commit any other act whereby the same would or might, if hereby given or bequeathed to or in trust for him, be forfeited to or become vested in any other person or persons, then and in such case the said trustees or trustee shall from time to time, at the discretion of the said trustees or trustee, either withhold payment of the said annual sum of £—— or any part thereof, to the intent that the same may sink entirely or partially for the benefit of the person or persons for the time being entitled to the said premises in remainder expectant on the said term of ninety-nine years, or, at any time or times during the life of the said W. Y. B., pay and apply the said annual sum, or any part thereof, for

the maintenance and support of the said W. Y. B., or in any manner for his benefit, as the said trustees or trustee shall, in their or his discretion, think fit [it being my intent that the said annual sum shall not be in anywise liable to or be affected by the debts, charges, or incumbrances, forfeitures or engagements, of the said W. Y. B.; and that the said trustees or trustee for the time being shall have full power, in any of the cases aforesaid, to withhold, either wholly or partially, the same annual sum, or any part thereof, for such time or times and in such manner as they or he shall from time to time think expedient (b):] PROVIDED ALWAYS, and I do hereby declare, that the said annual sum of £—— is so directed to be raised and applied for the benefit of the said W. Y. B. as hereinbefore is mentioned, upon the express condition that the said W. Y. B. shall at all times after my decease forego and omit to use or take upon himself the surname of B. [and shall from time to time, instead of his present name of W. Y. B., use upon all occasions the name of W. Y. only]; And it

Declaration that the annuity is given on condition that the natural son forego and omit to use testator's surname;

(b) See Precedent VI. It will be observed, that the Precedent in the text does not authorise the application of any part of the annuity for the benefit of the family of the annuitant; and that no accumulation of any part of the annuity is contemplated. The above clause between the brackets is not absolutely necessary, but may be useful as showing more unmistakably the intentions of the testator.

is my intent and meaning that the condition hereinbefore expressed shall be construed as precedent to the raising of all or any part of the said annual sum of £——; And it is my further intent and meaning, that, if at any time after having relinquished or omitted to use the said surname of B., the said W. Y. B. shall resume the said surname of B. (whether he shall or shall not thereafter forego or omit to use or take upon himself the said surname), then and in such case the said annual sum of £——, or any part thereof, shall be no longer raisable, but shall sink for the benefit of the person or persons for the time being entitled to the said premises in remainder expectant on the said term of ninety-nine years (c). PROVIDED ALWAYS, AND I DECLARE my will to be, that the receipt or receipts in writing of the trustees or trustee for the time being of the said term of ninety-nine years for the said sum of £—— hereinbefore directed to be raised as aforesaid, or any part thereof, shall from time to time be a sufficient and effectual discharge or sufficient and effectual discharges for the same; And that the person or persons to whom such receipt or receipts shall be given, his,

—on resuming name annuity to cease.

Trustees' receipts to be sufficient discharges.

(c) The condition upon which the annuity in the text is given, is unusual, but the Precedent may be useful in the case of legacies and bequests upon conditions. It will be noticed, that the testator does not require the annuitant to take any legal steps as to the change of name, he having no legal right to the name he bears.

her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received.

And subject to the annuity, in trust for reversioner.

AND I DECLARE, that (subject and without prejudice to the trusts aforesaid) the said trustees or trustee shall permit and suffer the person or persons for the time being entitled, under the limitations in my said will contained and hereinbefore referred to, to the remainder of the said manors and other hereditaments expectant upon the determination of the said term of ninety-nine years, to receive the rents and profits of the same premises for his and their proper use and benefit.

Declaration that the term hereby limited shall be subject to powers of leasing in will.

PROVIDED ALWAYS, AND I DECLARE my will and mind to be, that the said term of ninety-nine years hereby limited shall be subject to the power of leasing in my said will contained, and accordingly may be overreached by any exercise thereof, in such and the same manner in all respects as if the same had been limited by my said will instead of this codicil.

Bequest of vase as an heirloom.

I BEQUEATH my bronze vase, given me by ——, unto the said C. D. and E. F., their executors, administrators, and assigns, IN TRUST to permit the same, as far as the rules of law and equity will permit, to be used and enjoyed in the nature of an heirloom by the person or persons who, by virtue of the limitations contained in my said will, shall for the time being be entitled to the

manors and other hereditaments thereby devised in strict settlement, but so that the same shall not vest absolutely in any child of any person or persons in and by my said will made tenant for life, unless or until such child shall attain the age of twenty-one years; And in all other respects I ratify and confirm my said will. IN WITNESS &c.

No. XXV.

WILL *of* REAL *and* PERSONAL ESTATE.— *—Devise of Real Estate to Trustees, in Trust for Sale.—Bequest of Personalty to Trustees, as to Part, in Trust for Testator's Son, in a given Event; and as to the Residue, and as to the Part given to Testator's Son, in case the given Event does not take place, to sell and convert into Money, and to pay Debts and Legacies, and invest the Residue.—Direction that the Trustees shall thereout pay an Annuity to Son's Wife for her separate Use, and a further Annuity to Testator's Son, or for the Benefit of his Family, in the Discretion of the Trustees; and, so subject, in Trust for the Issue of Testator's Son (extending to Issue of Sons dying under Twenty-one), with Powers of Advancement, Maintenance, and Education.—In default of Issue of Son, in Trust for such Persons as he shall by Will appoint; in default of Appointment, to his Personal Representatives.—Devise of Mortgage Estates. (Usual Clauses).*

I, A. B., of &c., DECLARE THIS TO BE MY LAST WILL. I DEVISE all my real estate (except estates vested in me upon trust or by way of mortgage), unto C. D. of &c., and E. F. of &c., their heirs and assigns, UPON TRUST that they the said C. D. and E. F., and the survivor of them, and the heirs and assigns of such survivor, shall, so soon as conveniently may be, sell my said real estates, either altogether or in parcels, and either by public auction or private contract, with full power to buy in or rescind any contract for sale, and to resell without being in anywise answerable for any loss which may happen thereby; And shall stand possessed of the money to arise from any such sale upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinafter declared concerning the same. AND I BEQUEATH all my personal estate (except chattels real included in the general devise hereinbefore contained of real estate), and except what I otherwise dispose of by this my will or any codicil hereunto, unto the said C. D. and E. F., their executors, administrators, and assigns, upon and for the trusts, intents, and purposes hereinafter declared of or concerning the same (that is to say); As to all my household furniture, books, plate, and works of art, wines, liquors, and other stores in or about my dwelling-house at ——— at the time of my death, IN TRUST for my son G. H., his executors, administrators, and as-

Devise of real estates to trustees,

In trust to sell.

Bequest of personalty to the same trustees.

As to particular parts:

In trust for testator's

son in a given event; signs, in case he my said son G. H. and his family shall quit and deliver up to my said trustees, or the survivor of them, or the heirs or assigns of such survivor, the possession of my said dwelling-house, with the appurtenances, within three calendar months next after my death, but not otherwise; And as to the residue of my personal estate hereinbefore bequeathed, and also in case my said son G. H. and his family shall not quit and deliver up to the said C. D. and E. F., or the survivor of them, or the heirs or assigns of such survivor, the possession of the said capital messuage or dwelling-house, with the appurtenances, within three calendar months next after my death, as to the said household furniture, books, plate, works of art, wines, liquors, and other stores, UPON TRUST that they the said C. D. and E. F., and the survivor of them, and the executors and administrators of such survivor, shall, with all convenient speed after my death, sell, call in, and convert into money such part of the same premises respectively as shall not consist of ready money. AND I DECLARE, that the said C. D. and E. F., and the survivor of them, and the heirs, executors, administrators, and assigns respectively of such survivor, shall hold the monies to arise from the sale or sales hereinbefore directed to be made of my real estate, and also the money to arise from that part of my personal estate which I have directed to be sold, called in, and converted into money, and

and as to the residue, as also the particular part, in case the event does not take place,

—to sell and convert into money;

of my ready money, UPON TRUST that they the said C. D. and E. F., and the survivor of them, and the heirs, executors, and administrators of such survivor (hereinafter called the trustees or trustee), shall thereout pay my debts, funeral and testamentary expenses, and the legacies bequeathed by this my will or any codicil hereto; And shall invest the residue thereof, in the names or name of the said trustees or trustee, upon any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England, Wales, or Ireland, with power for the said trustees or trustee to vary the said stocks, funds, and securities, at their or his discretion. AND I DECLARE, that the said trustees or trustee shall hold the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, UPON TRUST that the said trustees or trustee, during the lifetime of L. M., wife of my said son G. H., pay the yearly sum of £—— to the said L. M. for her separate use, independent of any husband of the said L. M., and of his debts, control, interference, or engagements, but so that the said L. M. shall not have power to dispose thereof by way of anticipation; the said annual sum of £—— to be paid by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months from and after my death; And shall, during the life of my said son G. H., or for such part or parts of that period, and so often, and from time to time, so long as

—to pay debts and legacies, &c.,

—and invest residue in the stocks, &c.

Declaration that trustees pay thereout an annuity to son's wife for her separate use;

and a further annuity to a son, or for the benefit of his

family, in the discretion of the trustees.

the said trustees or trustee shall in their or his free and uncontrolled discretion think proper, and not otherwise, pay the clear annual sum of £—— into the proper hands of the said G. H., for his own use and benefit; And in case the same trustees or trustee for the time being, in such their or his free or uncontrolled judgment, think proper and determine not to pay or no longer to pay the same or any part thereof to G. H., then shall, during the life of my said son G. H., or for such part or parts of that period, and so often, and from time to time, so long as the said trustees or trustee in their or his free and uncontrolled discretion shall think proper, pay and apply the said annual sum, or any part thereof, unto or for the separate use of the said L. M., or for the support and maintenance of the said G. H. and of his wife and child or children for the time being, or any of them, or in discharge of their or any of their expenses, in such proportions and in such manner in all respects as the same trustees or trustee shall approve; And (if the said trustees or trustee shall think proper, but not otherwise) the said last-mentioned annual sum of £—— to be paid or applied by equal half-yearly payments, the first half-yearly payment or application thereof to be made at the expiration of six calendar months next after my death (b). AND I DECLARE, that, subject to the

And so subject,

(b) See Precedent VI., and the notes thereto. It may be doubted whether the object of the testator would not

aforesaid trusts, the said trustees or trustee shall hold the said trust monies, stocks, funds, and securities, and the interest, dividends, and annual produce thereof, IN TRUST for all and every the children and child of my said son G. H. living at my death or afterwards to be born, who, being sons or a son, shall attain the age of twenty-one years, or die under that age leaving issue living at their or his death or respective deaths, or born in due time after, or, being daughters or a daughter, shall attain the age of twenty-one years or marry, to be divided among such children of the said G. H., if more than one, or their respective executors, administrators, or assigns, in equal shares; and if there shall be but one such child, the whole to be in trust for that one child, his or her executors, administrators, or assigns. PROVIDED ALWAYS, &c., (*Advancement clause, see p.* 192). AND I HEREBY DECLARE, &c. (*Maintenance clause, see p.* 193). AND shall &c. (*Accumulation clause, see p.* 193). AND I DECLARE, that, if there shall be no child of the said G. H., who, being a son, shall attain twenty-one years or die under that age leaving issue, or, being a daughter, shall attain that age or marry, then, from the death of the said G. H., and such failure of issue of his

In trust for the children of testator's son, (extending to issue of sons dying under 21.)

Advancement clause.

Maintenance clause.

Accumulation clause.

In default of issue of son, in trust for such person as he shall appoint.

be attained as easily, and with less risk of paining the party intended to be benefited, if the annuity to G. H. were, in the first case, limited to his wife for her separate use, without power of anticipation ; and, after her death, upon trust for the benefit of her husband and his family.

body as aforesaid, the said trustees or trustee shall hold the said trust monies, stocks, funds and securities, and the interest, dividends, and annual produce thereof, or so much thereof as shall not have been applied under any of the trusts or powers hereinbefore contained, IN TRUST for such person or persons and for such intents and purposes as the said G. H. shall by will appoint.

In default of appointment, in trust for his personal representative.

AND in default of such appointment, and so far as such appointment shall not extend, IN TRUST for the person or persons who, under the distribution of the effects of intestates, would be entitled thereto in case the said G. H. had died possessed thereof and intestate; such persons, if more than one, to take in the shares to which they would have been entitled under the same statute (c).

Rents and

AND I DECLARE, that, in the mean

(c) If there is any fear lest the issue of the son should fail in his lifetime, it may be expedient to provide for the disposal of the interest of the fund during the suspense of there being a persen entitled. The following proviso may be inserted in this place:—

"PROVIDED ALWAYS, that, if at any time during the life of the said G. H., and before any child of the said G. H., being a son, shall have attained twenty-one years, or died under that age leaving issue, or, being a daughter, shall have attained that age or married, there shall happen not to be any child of the said G. H. for the time being entitled in expectancy under the trusts aforesaid, then the said trustees or trustee shall, during

time, until &c., (*Rents and profits till a sale to go as the income of purchase money, supra, p.* 268.) I DEVISE and BEQUEATH &c. (*Devise of mortgage estates, supra, p.* 194.) AND I APPOINT, &c. (*Appointment of executors, with power to arrange and compromise; Trustee clauses, pp.* 194, 195, 196, 197.) IN WITNESS &c.

profits till a sale to go as the income of purchase-money.

Devise of mortgage estates.

Usual clauses.

such suspense of there being any child of the said G. H. so entitled in expectancy as aforesaid (subject to the said trusts for raising the said annuities of £—— and £—— respectively), pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities, to" &c. (*Declare trusts thereof*).

No. XXVI.

CODICIL.—*Devising Freehold Estates in —— to Trustees for a Term of Years, and Subject to the said Term to such of Testator's Sons as should first attain the Age of Twenty-one; and, in default of such issue, to Testator's Daughters who shall attain the Age of Twenty-one; if more than one, as Tenants in Common, and if but one, then the whole to that Daughter; and, in default of such issue, to Testator's Nephew in Fee.—Trusts of Term of Years to be a Secondary Security for a Jointure Rent-charge secured by Testator's Marriage Settlement.—(Trustee Clauses.)*

I, A. B., of &c., DECLARE THIS TO BE A CODICIL TO MY WILL, dated ——. I DEVISE all my freehold estates in the parishes of —— and —— in the county of ——, TO THE USE of C. D., of &c., and E. F., of &c., their executors, administrators, and assigns, for the term of ninety-nine years, to be computed from my death. And after the expiration of the same term, and in the meantime subject thereto and to the trusts thereof, TO THE USE of such son of my body as shall first attain

the age of twenty-one years, his heirs, and assigns. And for default of such issue, To THE USE of all my daughters or any my daughter who shall attain the age of twenty-one years, or marry under that age, their respective heirs and assigns, to be divided between or among such daughters, if more than one, in equal shares; And if there shall be but one such daughter, To THE USE of such one daughter, her heirs and assigns; And in default of such issue, To THE USE of my nephew, J. K., of &c., his heirs and assigns. AND I DECLARE, that the said premises are hereby devised to the said C. D. and E. F., their executors, administrators, and assigns, for the said term of ninety-nine years, by way of a secondary security for the raising and paying of the annual sum of £——, expressed to be secured to my said wife by the settlement made on my marriage with my said wife; for which purpose I DECLARE, that if the rents and profits of the estates by my said settlement expressed to be charged with or made liable to the payment of the said annual sum of £—— to my said wife shall in any one year be insufficient to pay the same annual sum of £——, then, and so often as the same shall happen, the said C. D. and E. F., and the survivor of them, and the executors or administrators of such survivor, (hereinafter called the trustees or trustee), shall, by sale or mortgage of the premises comprised in the same term or any part thereof, for all or any part of the same term, or out of the rents and profits of the same

Trusts of term of ninety-nine years.

premises, or by any other reasonable ways and means, raise such sum or sums of money as they or he shall think expedient for the payment of so much of the said annual sum of £—— as shall for the time being remain unpaid, and shall apply the money so to be raised accordingly.

Trustee's receipt clauses.

AND I DECLARE, that every receipt of the said trustees or trustee for any money payable to them or him under the trusts aforesaid, shall be an effectual discharge to every person to whom the same shall be given; and that no person taking such receipt shall be answerable for the misapplication or nonapplication of the money therein expressed to be received, or shall be bound to see that any money is required to be raised for the purposes of this codicil, or that no more money is raised than is required for the purposes of this codicil.

Trustee clause.

AND I DECLARE (*Power to appoint new trustees; Trustees' indemnity clause, pp.* 196, 197). And in all other respects I ratify and confirm my said will. IN WITNESS &c.

No. XXVII.

Will *made immediately after Testator's Marriage.—Confirmation of Jointure Rent-charge secured by Testator's Marriage Settlement.—Devise of Real Estates to the Use that Testator's Wife may receive a Yearly Rent-charge in Addition to the Jointure secured by the Settlement, with Powers of Distress and Entry, and subject thereto to the Use of the Issue of Testator's Marriage, Male and Female, in Strict Settlement.—Name and Arms Clause.—Trusts for Management during Minorities.—Power for Trustees to raise Money by Mortgage, and to invest the Money so to be raised in the Purchase of Lands in——, or towards paying the Expense of Inclosures.—Power of Leasing.—Powers of Jointuring and Charging Portions.—Power of Sale and Exchange.—Devise of Trust and Mortgage Estates.—Appointment of Executors.—Usual Clauses.*

I, A. B., of &c., DO DECLARE this to be my last will. I CONFIRM the annual sum or yearly rent- **Confirms jointure to**

testator's wife.

charge of £——, secured to my wife by way of jointure by the settlement made on my marriage, and all remedies, powers, and terms of years for securing the same annual sum or yearly rent-charge. I DEVISE all my real estates except what I shall otherwise dispose of by this my will or any codicil hereto, and except estates vested in me upon any trust or by way of mortgage, subject as to the hereditaments charged therewith to the said annual sum or yearly rent-charge of £——, and the powers, remedies, and term of years for securing the same, TO THE USE that my said wife may, during her life, in addition to the said annual sum or yearly rent-charge of £—— so secured as aforesaid, receive during her life the yearly rent-charge of £—— by equal quarterly payments, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December in every year, the first quarterly payment thereof to be made on such of the said days of payment as shall first happen after my death; AND TO THE FURTHER USE (*Powers of distress and entry, p.* 246); and subject thereto, TO THE USE of my first and every other son successively according to seniority for his life, and after the death of each such son TO THE USE of the respective first and other sons of such son successively according to seniority in tail male; And in default of such issue TO THE USE of all and every my daughters and daughter during the respective lives of such daughters as tenants in common without impeachment of waste; And

Devise of real estates,

To the use that testator's wife may receive a rent-charge;

with powers of distress and entry;

To the use of testator's sons successively for life;

To the first and other sons of such sons in tail male.

To testator's daughters during their lives as tenants in common.

as to the respective share of every one of them my said daughters after her decease, To THE USE of the first and other sons of such daughter successively according to seniority, in tail male; And in default of such issue, then as to the share or respective shares, as well originally vested in any of my said daughters of whose body there shall be such default or failure of issue male as aforesaid, as any share or shares by virtue of this present clause accruing to his or her issue male as aforesaid, To THE USE of the other or others my said daughters during their respective lives, in equal shares, as tenants in common, without impeachment of waste; And as to the respective accruing share so limited to every one of them my said daughters respectively from her respective decease, To THE USE of her first and other sons successively according to seniority in tail male; And in case there shall be a default or failure of issue male of the bodies of all my said daughters but one, then as to the entirety of the same premises To THE USE of such last-mentioned one of my said daughters and her assigns during her life without impeachment of waste; And after her decease To THE USE of the first and other sons of such last-mentioned daughter successively according to seniority in tail male; And in default of such issue To THE USE of the first and other sons of every son of my body successively according to seniority, in tail, the respective first and other sons of the elder of my sons and the heirs of the respective bodies of

With remainder to their first and other sons in tail male;

with cross remainders.

To the use of the first and other sons of testator's sons successively in tail;

such first and other sons of my said elder son to take before the first and other sons of the younger of my said sons and the heirs of the respective bodies of such last-mentioned first and other sons; And in default of such issue then as to the respective share of every of them my said daughters in the same premises TO THE USE of her first and other sons successively according to seniority, in tail; And in default of such issue, then as to the share or shares as well those originally limited to any of my said daughters of whose body or bodies there shall be such default or failure of issue, as such other share or shares as shall have accrued to her or them or her or their issue respectively, TO THE USE of the first and other sons of each of my remaining daughters successively according to their respective seniorities, in tail; And in default of such issue as aforesaid of all my said daughters but one, then as to the entirety of the said premises TO THE USE of the first and other sons of that one daughter successively according to seniority, in tail; And in default of such issue, TO THE USE of the respective daughters and daughter of my said first and other sons in equal shares as tenants in common in tail, as such my respective sons shall be in seniority, with cross remainders between or among such daughters in tail. And if all such respective daughters but one shall die without issue, or there shall be but one such daughter, TO THE USE of such surviving or only daughter in tail, so that the respective daughters of the elder of my sons and the heirs of the respective bodies of

with remainder as to the share of each of testator's daughters to her respective first and other sons in tail; with cross remainders.

And in case there shall be a failure of such issue of all testator's daughters but one, then as to the whole to the first and other sons of such daughter in tail; remainder to daughters of testator's sons as tenants in common in tail, with cross remainders; and if but one such daughter, then the whole to such daughter in tail;

such last-mentioned daughters may take before the respective daughters of the younger of my said sons and the heirs of their respective bodies; And in default of such issue, then as to the respective share of every one of my said daughters respectively, To THE USE of the respective daughters and daughter of every of my said daughters in equal shares as tenants in common in tail, with cross remainders between them in tail; and if all of them but one shall die without issue or there shall be but one such daughter, then to that surviving or only daughter in tail; And in default or failure of such issue as last mentioned of any of my said daughters, then, as well as to the respective share or shares originally limited to any of my said daughters of whom there shall be such default or failure of issue, as to such share or shares as shall have accrued to her or them or her or their issue respectively, To THE USE of the respective daughters and daughter of each of the remaining and others of my said daughters, to be divided between such respective daughters and daughter of each such remaining and other of my daughters in equal shares as tenants in common in tail, with cross remainders between them in tail; And if all such last-mentioned daughters but one shall die without issue, or there shall be but one such daughter, To THE USE of that surviving or only daughter in tail; but in case there shall be a default or failure of such issue as last is mentioned of all my said daughters but one, then as to the entirety of the

with remainder to the daughters of testators, as tenants in common in tail, with cross remainders;

with remainder to daughters of testator's remaining daughters, as tenants in common in tail, with cross remainders in tail.

same premises, To THE USE of the daughters or daughter of such my remaining or only daughter, if more than one in equal shares as tenants in common in tail, with cross remainders between them in tail; And if all the daughters taking under this last devise save one daughter shall die without issue, or there shall be but one such daughter, THEN TO THE USE of such surviving or only daughter in tail; And for want of such issue TO THE USE of X. Y., of &c., his heirs and assigns, he and they taking and using the surname of B. only and quartering the arms of B. as used by me. AND I DECLARE (*Name and Arms clause, p.* 274). AND I DECLARE that (*Trusts for Management during Minorities, p.* 280). AND I DECLARE that it shall be lawful for the said C. D. and E. F., and the survivor of them, and the executors or administrators of such survivor (but subject and without prejudice to the said annual sum or yearly rent-charge of £——, and the powers and remedies for securing the same,) to borrow any money they or he shall think fit for the purposes hereinafter mentioned, upon the security of my estates in the county of —— hereinbefore devised; And that, in order thereunto, it shall be lawful for the said C. D. and E. F. and the survivor of them, and the executors or administrators of such survivor, (hereinafter called the trustees or trustee,) subject and without prejudice as aforesaid, by deed to charge my said real estate hereby devised or any part thereof with the payment of any money

To the use of X. Y. in fee.

Name and arms clause.

Trusts during minority.

Power for trustees to raise money by mortgage of estates in ——.

which the said trustees or trustee shall so think fit to borrow, with interest for the same; and by the same or any other deed or deeds to appoint the premises so to be charged to any person or persons for any term of years, yet so that the estate or estates to be so created or limited be made to cease on payment of the money so to be charged and the interest thereof by the person or persons for the time being entitled to the hereditaments in such term or terms of years to be comprised in remainder or reversion expectant on the determination of the said term or terms of years respectively. AND I DECLARE that the receipt or receipts of the said trustees or trustee for any money advanced on the security of any charge or charges, mortgage or mortgages, to be made under the aforesaid power or authority, shall effectually discharge the person or persons paying the same therefrom, and from being concerned to see to the application or being answerable for the nonapplication or misapplication thereof. AND I DECLARE that the said trustees or trustee shall invest the money so to be raised as aforesaid, in the purchase of freeholds of inheritance in the county of ——, or of copyholds convenient to be held therewith, or with the lands hereby devised or so to be purchased as aforesaid, or in or towards defraying the expenses of any inclosure or inclosures which may be made of any of the estates hereinbefore devised or so to be purchased as aforesaid, and shall settle and assure, or cause to be settled and assured, the heredita-

And to give receipts for the mortgage money.

And lay out the money so to be raised in the purchase of estates in ——, or in paying the expense of inclosures.

ments to be purchased with the money to be raised under this present power, To THE USES, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations hereinbefore declared of the premises hereinbefore devised, or as near thereto as the nature of the property so to be settled and the deaths of parties and other intervening circumstances will admit. AND I DECLARE, that, during the minority of any of my said sons or remoter descendants who shall for the time being be entitled to the possession of my real estates in the counties of —— and —— under the limitations hereinbefore contained as tenant in tail male or in tail by purchase, and during the minority and discoverture or respective minorities or discovertures of any of my daughter or daughters who shall be entitled to the possession of the same estates pursuant to the aforesaid limitations, it shall be lawful for the said trustees or trustee at their or his discretion to apply such part or parts as the said trustees shall think fit of the rents, issues, and profits of the same estates in the maintenance, education, and advancement in life of such of my sons or daughters or issue as shall be entitled to the possession of my said real estates in —— and —— under the limitations aforesaid during his minority, or her or their minority and discoverture or respective minorities and discovertures, as the case may be. AND I DECLARE that the said trustees or trustee (*Accumulation clause*, *p.* 250).

Power for trustees during the minority or discoverture of tenant for life of estates in ——, to apply rents for the maintenance and advancement of such tenant for life.

Accumulation clause.

AND I DECLARE (*Power to lease for twenty-one years, p.* 253). AND I DECLARE (*Powers of jointuring and charging portions, pp.* 250, 251). AND I DECLARE (*Power of sale and exchange, p.* 254). AND I DEVISE (*Devise of copyholds and bequest of leaseholds upon trusts corresponding with the uses of the freeholds, pp.* 282, 283). AND DEVISE (*Devise of trust and mortgage estates, p.* 403). AND I APPOINT (*Appointment of executors with power to arrange and compromise, pp.* 194, 955; *Trustees' receipt clause: Power for the appointment of new trustees; Indemnity clause, pp.* 195, 196, 197). IN WITNESS &c.

Power of leasing for 21 years.

Power of jointuring; and charging portions.

Power of sale and exchange.

Devise of copyholds, and bequest of leaseholds.

Devise of trust and mortgage estates.

Appointment of executors.

Trustee clauses.

No. XXVIII.

WILL *of* REAL *and* PERSONAL ESTATE. *—Bequest of Legacies to Executors.—Bequest of a Sum of Money to Trustees upon Trust to invest and pay the Produce to Testator's Daughter for Life for her Separate Use, and after her Death to her Husband for Life, and after the Death of the Survivor of Husband and Wife, one Moiety to sink into Testator's Residuary Personal Estate, and one Moiety to be in Trust for the Daughters of Testator's Daughter, and the Issue of such as should die in the Lifetime of the Testator's Daughter or of her Husband.—Maintenance and Accumulation Clause.—Bequest of Legacies of £—— apiece to Daughters of G. H. at Twenty-one or Marriage.—Trusts for Investment of last-mentioned Legacies.—Maintenance and Accumulation Clause.—Direction that when G. H. attain the Age of —— Years, the Possibility of her having further Children should be considered as past.—Bequest of Legacies of £—— apiece to the Daughters of C. D. at Twenty-one or Marriage.—Direc-*

tion as to Investment.—Devise and Bequest of Real and Personal Estate upon Trust to sell.—Trusts of Purchase-Money to pay Debts and Legacies, subject thereto for Children of T. U., deceased. —Power for Trustees to defer Sale.—Power for Trustees to allot any Part of Testator's Property.—Power of Leasing Real Estates till a Sale.—Devise of Trust and Mortgage Estates.—Appointment of Executors.—(Usual Clauses).

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I BEQUEATH to each of my executors hereinafter named, who shall act in the execution of this my will, the sum of £——. I BEQUEATH to C. D., of &c., and E. F., of &c., their executors, administrators, and assigns, the sum of £——. AND I DIRECT that the said C. D. and E. F., the survivor of them or the executors or administrators of such survivor, (hereinafter called the trustees or trustee,) shall invest the said sum of £ —— in their or his names or name in any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England, Wales, or Ireland, and shall, from time to time, at the discretion of the said trustees or trustee, alter, vary, or transpose the said stocks, funds, or securities into or for others of the same or a like nature; AND I DIRECT that the said trustees or trustee shall, during the life of my daughter G. H., the wife of J. K.,

Legacies to executors.

Bequest of a sum of money to trustees, upon trust to invest,

—and pay the annual produce to testator's daughter for

her life for her separate use

of &c., pay the interest, dividends, and annual produce of the said trust monies, stocks, funds, and securities unto the said G. H. for her separate use, independently of her present or any after-taken husband, and so that she shall not have power to deprive herself thereof by sale, mortgage, charge, or otherwise, in the way of anticipation; and, after the death of the said G. H., shall pay the same interest, dividends, and annual produce to the said J. K. for his life. AND after the death of the survivor of the said G. H. and J. K, I DIRECT that one moiety of the said trust monies, stocks, funds, and securities shall sink into and form part of my residuary personal estate; And that the said trustees or trustee shall stand possessed of the other moiety of the said trust monies, stocks, funds, and securities, upon trust for all the daughters or any the daughter of the said G. H. by her present or any future husband, who, being living at my death and then of the age of three years, shall attain the age of twenty-four years or marry, or who, being born after my death or being living at my death and under the age of three years, shall attain the age of twenty-one years or marry, and the issue living at the death of the survivor of the said G. H. and J. K. of every daughter of the said G. H. (either by her present or any future husband) dying in the lifetime of the said G. H. and J. K., or of the survivor of them, who being a male or males, shall attain the age of twenty-one years, or being a female or females shall attain that age

and after her death for her husband for his life;

and after, one moiety to sink into testator's residuary personal estate; and the other moiety to be in trust for daughters of G. H. at 24 or marriage.

and the issue of daughters dying in the lifetime of G. H. and J. K.

or marry, in equal shares, as tenants in common, the issue of every such deceased daughter to take only the share to which such daughter would have been entitled if then living. AND I DIRECT that the said legacy of £—— shall bear interest at the rate of 4*l.* per cent. per annum from my death until the time of the actual appropriation or investment thereof. AND I DECLARE, that, after the death of the survivor of the said G. H. and J. K., it shall be lawful for the said trustees or trustee (without reference to the ability of any future husband of my said daughter, or of the parent of any issue of any deceased daughter of the said G. H., to maintain and educate any daughter or the issue of any daughter of the said G. H.) to apply the whole or so much as the said trustees or trustee for the time being shall think fit of the dividends, interest, and annual income of the presumptive or contingent share of each object of the preceding trusts of the said last-mentioned moiety of the said trust monies, stocks, funds, and securities, in or towards the maintenance or education of such object, in such manner as the said trustees or trustee for the time being shall think fit; and that the said trustees or trustee may either themselves or himself pay or apply the same, or may pay the same to the guardian or guardians of any such object, without seeing to the application or being answerable for the misapplication or nonapplication thereof; AND SHALL, during such suspense of absolute vesting as aforesaid, accumulate the residue of

Legacy to bear interest at £4 per cent. till invested.

Maintenance clause.

Accumulation clause.

such dividends, interest, and annual produce by investing the same and the resulting income thereof in any of the stocks, funds, or securities hereinbefore mentioned, with power to resort to the accumulations of any preceding year or years and apply the same for the maintenance or education of any person presumptively entitled to the principal fund from which the same shall have proceeded, in manner in which the same accumulations might have been applied if the same had been dividends, interest, and annual produce arising from the original trust funds in the year in which the same shall be so applied. I BEQUEATH to each daughter of my said daughter G. H. by her present or any future husband, who shall attain the age of twenty-one years or be married, the sum of £——. AND I DIRECT that the said trustees or trustee shall, with all convenient speed after my death, as respects the legacy of £—— to each daughter of the said G. H. who shall be living at my death, and shall be under the age of twenty-one years and unmarried, and as respects the legacy of each such daughter as shall be born after my death, forthwith after the birth of such daughter, invest the legacy of each such daughter in the names or name of the said trustees or trustee, in manner directed with respect to the said sum of £—— hereinbefore bequeathed, with the like power to alter, vary, and transpose the stocks, funds, and securities upon which any such legacy

To each of the daughters of G. H. £—— at 21 or marriage.

Direction as to investment of said legacies.

shall be invested, as is hereinbefore contained with respect to the stocks, funds, or securities upon which the said sum of £—— shall be invested. AND I DIRECT that the legacy of £—— for each daughter of the said G. H. who shall be living at my death, shall carry interest at the rate of 4*l.* per cent. per annum from my death until the actual appropriation or investment thereof; And that the legacy of £—— for each daughter as shall be born subsequently to my death shall carry interest at the like rate from the birth of such daughter until the actual appropriation or investment thereof. AND I DECLARE that it shall be lawful for the said trustees or trustee, during the suspense of absolute vesting of any legacy of £—— hereinbefore bequeathed, without reference to the ability of the parents or parent of any daughter of the said G. H. to maintain such daughter, to apply the whole or such part as the said trustees or trustee shall think fit of the annual income of the legacy of £——, to which such daughter shall be entitled in expectancy under this my will, and of the stocks, funds, or securities upon which the same shall be invested, for or towards the maintenance or education of such daughter, either directly or to the guardian or guardians or parent or parents of such daughter, without seeing to the application thereof or requiring any account of the same. AND I DECLARE that the said trustees or trustee shall, during such suspense of absolute vesting, accumulate the residue (if any) thereof in the

To bear interest at £4 per cent. until invested.

Maintenance clause.

Accumulation clause.

way of compound interest, by investing the same and the resulting income thereof from time to time in and upon any such stocks, funds, or securities as are hereinbefore mentioned, for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulations of any preceding year or years and apply the same for the maintenance or education of any daughter of the said G. H. for the time being presumptively entitled to the principal fund from which the same shall have proceeded, in manner in which the same accumulations might have been applied if the same had been dividends, interest, and annual produce arising from the original trust funds in the year in which the same shall be so applied. AND I DECLARE, that, in case my said daughter G. H. shall attain the age of —— years, the possibility of her having children shall be considered as extinct, and no child of the said G. H. born after the said G. H. shall attain the said age of —— years nor the issue of any such child shall take under any bequest hereinbefore contained. I BEQUEATH to each of the daughters of the said C. D. by E. D. his late wife, who shall be living at my death and shall attain the age of twenty-one years or be married, the sum of £——. AND I DECLARE, that in case any daughter or daughters of the said C. D. by the said E. D. shall die in my lifetime leaving a child

When G. H. attains the age of —— the possibility of her having further issue to be considered past.

Bequest to each of the daughters of C. D., of £——, at 21 or marriage.

If any such daughters die intestate in testator's lifetime leaving children,

or children who shall survive me, and who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then the legacy hereinbefore bequeathed to the daughter of the said C. D so dying in my lifetime shall go to the children living at my death of such daughter, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one in equal shares. AND I DIRECT that the said trustees or trustee shall (*Directions as to investment to.* —*Directions as to interest on legacies till invested.* —*Maintenance and accumulation clauses.*—*See ante, as to the sum of £—— firstly bequeathed*). I DEVISE all my real estate, except what I otherwise devise by this my will, and except estates vested in me upon any trust or by way of mortgage, unto the said C. D. and E. F., their heirs, executors, and administrators respectively, according to the nature and tenor thereof, UPON TRUST (*Trust for sale of real estate, p. 226*). I BEQUEATH all my personal estate (except chattels real) included in the general devise hereinbefore contained of real estate, and except what I otherwise bequeath by this my will, unto the said C. D. and E. F., their executors and administrators, UPON TRUST that the said C. D. and E. F. or the survivor of them, or the executors or administrators of such survivor, shall, as soon as conveniently may be, sell, call in, and convert into money, such part of my said personal estate as

the legacy of such daughter to go to her children.

Direction as to investment.

Devise of real estate to trustees upon trust for sale.

Bequest of personal estate to trustees upon trust for sale and conversion into money;

Trusts of money to pay debts and legacies and invest the residue.

shall not consist of money. AND I DECLARE, (*Trust for payment of funeral and testamentary expenses, debts, and legacies, and for investment of the residue, with power to vary the same, p.* 227). AND I DECLARE that the said trustees or trustee shall hold the said last-mentioned trust monies, stocks, funds, and securities, IN TRUST for all the children or any the child of T. U. of &c., deceased, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one in equal shares. (*Advancement, maintenance, and accumulation clauses, pp.* 192, 193, 194.) AND I DECLARE that my said trustees or trustee shall either forthwith sell and convert into money my said real and personal estate, or any part thereof, or defer such sale and conversion at their or his discretion, without being responsible for any loss to be occasioned thereby. AND I DECLARE that it shall be lawful for the said trustees or trustee at any time after my death, with the consent of all the children (if any) then living and of age of the said T. U., and as to such of the daughters then living and of age of the said T. U. whether covert or sole, instead of selling any part of my property to appropriate such part in or towards satisfaction of any share hereinbefore given to any child of the said T. U.; And every such appropriation shall take effect from such period and in such manner, and shall be in respect of such sum as my said trustees or trustee shall

Trust of residue for children of T. U.'s deceased sons at 21, daughters at 21 or marriage.

Power for trustees to defer the sale of testator's property.

Power for trustees, with the consent of the children of T. U. who shall have attained 21, to allot any part of testator's property.

think proper; and such property so to be appropriated shall be held by the said trustees or trustee upon the like trusts and with the like powers in all respects as are hereinbefore declared with respect to the several stocks, funds, or securities, in or upon which the share in respect of which such appropriation shall have been made might have been invested under the trusts hereby declared. AND I DECLARE (*Power of leasing real estates till a sale*, *p.* 268.) I DEVISE AND BEQUEATH all the estates which at my death shall be vested in me upon any trusts or by way of mortgage unto the said C. D. and E. F., their heirs, executors, and administrators respectively, according to the nature thereof respectively, upon the trusts and subject to the equity of redemption at my death subsisting or capable of taking effect therein respectively, but the money secured on such mortgage shall be considered as part of my personal estate (*a*). AND I APPOINT

Power of leasing real estates till a sale.

Devise of trust and mortgage estates.

Appoint-

(*a*) It has for some time been the general custom to insert in wills a devise of estates vested in the testator as a trustee; the advantage of vesting the legal estate in such trust property in a person of mature age and in a position to discharge as far as allowed by law the duties of a trustee, instead of allowing such legal estate to devolve upon an heir-at-law who may be an infant, absent, or from other causes an unfit or undesirable person, is manifest at once. Doubts have, however, been entertained as to whether the trusteeship passes with the estate devised, so as to enable the devisee of trust estates to execute the trusts reposed in his testator. The leading cases on this point and the deductions to be drawn therefrom, ap-

ment of ex-ecutors.

Trustee clauses.

(Appointment of executors, with power to arrange and compromise, p. 194.) AND I DECLARE

pear in 1 Jarm. on Wills, 2nd Edit. pp. 605—612. In *Cole* v. *Wade*, 16 Ves. 27, affirmed 19 Ves. 424, a testator gave his real and personal estate to A. and B., whom he appointed executors, their executors, administrators, and assigns, in trust for such of his relations as they should think proper; and declared, that, resting perfectly satisfied with the honour and justice of his said trustees and executors, he wished the whole disposition should be entirely in the discretion of the said trustees and executors, and the heirs, executors, and administrators of the survivor of them. And he directed his said trustees and executors and the survivor of them, and the heirs, executors, and administrators of such survivor, if they should think proper, to sell or mortgage the estates or such part thereof as they in their discretion should think proper. And the testator directed the said A. and B. or the survivor of them, or the heirs, executors, or administrators of such survivor, to convey and pay the whole to his relations within the time mentioned in the will. The surviving trustee devised and bequeathed the real and personal estate of the first testator to C. and D. upon the existing trusts. Sir *W. Grant*, M. R., held that C. and D. were not competent to execute the discretionary power given by the first will; that the power did not pass with the estate; and that it was only quasi persona designata that it could go to the heir. In *Cooke* v. *Crawford*, 13 Sim. 91, a testator devised all his real and personal estate to A., B., and C., upon trust that they or the survivors or survivor of them, or the heirs of such survivor, should at their discretion sell all the real estates; and he authorised the said trustees and their heirs to enter into contracts and make conveyances, and declared that the receipt of the said A., B., and C., or of the survivors or survivor of them, or the heirs, executors,

(Trustees' receipt clause.—Power to appoint new trustees.—Trustees' indemnity clause, pp. 195, 196, 197.) In witness &c.

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or administrators of such survivor, should be good discharges to the purchasers; and the testator directed his said trustees, their heirs, executors, or administrators, to stand possessed of the proceeds of the sale of the real estate upon certain trusts. Two of the trustees declined the trusteeship, and the third devised all estates vested in him as a trustee unto D. and E., upon the trusts affecting the same, and appointed D. and E. executors of his will. Sir *L. Shadwell*, V. C., held, that D. and E. could not make a title to a purchaser of such trust estate. The judgment of the Vice-Chancellor in *Cooke* v. *Crawford* was principally founded on the absence of the word "assigns," in the will of the original testator. In *Tilley* v. *Wolstenholm*, 7 Beav. 425, which case has been approved of by Sir *J. Romilly*, M. R., and Lord *Cottenham*, C., real and personal estate was devised and bequeathed to trustees, their heirs, executors, and assigns, with a declaration that the trusts should be performed by the trustees, and the survivors and survivor of them, his or her heirs and assigns. It was held by Lord *Langdale*, M. R., that the trust estates were well vested in the devisee upon trust of the surviving trustee, and his Lordship refused to appoint new trustees in the place of the original trustees. Where the heir of the trustee, through infancy or other disability, is incompetent to execute the trust, it will in most cases be the better plan, and in accordance with the usual course of practice, for the trustee to devise estates vested in him as a trustee to some person or persons fully qualified to perform the trusts. Where a testator has entered into a contract for the sale of real estate, it appears to be his duty to devise the legal estate to some person competent to convey to the purchaser, instead of allowing the same to descend to an infant heir.

XXIX.

WILL *of* REAL *and* PERSONAL PPOPERTY. —*Bequest of Legacies and of Annuity.* —*Devise and Bequest of Real and Personal Estate in Trust to sell and invest the Produce, and thereout to pay the said Annuity, and subject thereto for Testator's Nephew absolutely.*—*Devise of Mortgage Estates.*—*Appointment of Executors.*—*Trustee Clauses.*

Direction as to burial and monument.

THIS IS THE LAST WILL of me, A. B., of &c. I DIRECT that my body be interred in the cemetery at &c., and that a sum not exceeding £—— be expended by my executors in a monument to my memory; And that a sum not exceeding £—— be expended by my executors in purchasing and fixing a church clock with its appendages for the church of &c. I BEQUEATH to C. D., of &c., the sum of £——. I BEQUEATH to my friend E. F., of &c., an annuity of £—— for his life, and I direct that the same annuity be paid by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months from my death. I BEQUEATH to G. H., of &c., if he shall act as executor of this my will, the sum of £——. AND I DIRECT that such of

Legacies.

Direction as

the said legacies, if any, as shall be of the nature of charitable legacies shall be paid out of that part of my personal estate which by law shall be applicable to the payment of such legacies. I DEVISE all my real estate (except what I otherwise dispose of by this my will, and except estates vested in me upon any trust or by way of mortgage), unto J. K., of &c., and M. N., of &c., their heirs, administrators, and assigns. (*Trust for sale of real estate, p.* 226). AND I BEQUEATH my personal estate (except chattels real included in the general devise hereinbefore contained of real estate, and except what I otherwise dispose of by this my will) unto the said J. K. and M. N. their executors, administrators, and assigns, upon trust, that they the said J. K. and M. N., or the survivor of them, or the executors or administrators of such survivor, shall, as soon as conveniently may be after my death, sell and convert into money such parts thereof as shall not consist of money. AND I DECLARE that the said J. K. and M. N. and the survivor of them, and the heirs, executors, and administrators respectively of such survivor, shall out of the monies to arise from the sale of the said real estate hereinbefore devised in trust for sale, and from the calling in, sale, and conversion into money of such parts of the personal estate hereinbefore bequeathed as shall not consist of money, pay my funeral and testamentary expenses and debts, and legacies bequeathed by this my will or any codicil hereto (other than the said annuity of £——); And

to payment of charitable legacies.

Devise of real estate on trust to sell.

Bequest of personal estate on trust to sell and convert,

—and pay debts and legacies,

and invest

sufficient to answer annuity,

shall invest the residue of the said monies, or so much thereof as the said J. K. and M. N. or the survivor of them, or the executors or administrators of such survivor (hereinafter called the trustees or trustee,) shall in their or his discretion think necessary for securing the payment of the said annuity of £—— in the names of the said trustees or trustee in any of the public stocks or funds of Great Britain, or upon Government or real securities in England or Wales. AND I DECLARE that the said trustees or trustee may vary the said stocks, funds, and securities at their or his discretion, And shall stand possessed of the said monies, stocks, funds, and securities, subject, as to such part of the same monies as the said trustees or trustee shall think necessary to invest as aforesaid, to the payment of the said annuity of £——, In trust for O. P., of &c., absolutely

and hold the residue in trust for O. P.

Trustee clauses.

(*Devise of mortgage estates; Appointment of executors; Trustee clauses, pp.* 194, 195, 196, 197). IN WITNESS &c.

No. XXX.

CODICIL *bequeathing Legacies and Annuity, and a Sum of Money upon Trust. to pay the Interest to a Person until he shall attain the Age of Twenty-five, and then to assign the Principal to such Person.*

I, A. B., of &c., DO DECLARE THIS TO BE A CODICIL TO MY WILL, dated ——. I BEQUEATH to C. D., of &c., the sum of £ ——. I BEQUEATH to E. F., of &c., the sum of £——. I BEQUEATH to G. H., of &c., an annuity of £ —— during his life. AND I DIRECT the trustees or trustee for the time being of my said will, at their or his discretion, either to purchase such annuity for the life of the said G. H. in any insurance office, or to set apart any part of my personal estate, or of the money to arise from the sale of my real estate, for the purpose of paying the said annuity during the life of the said G. H. I BEQUEATH to J. K., of &c., and M. N., of &c., the sum of £ —— UPON TRUST to invest the same in the names or name of the said J. K. and M. N., or of the survivor of them, or of the executors or administra-

Bequest of legacies and annuity.

tors of such survivor, in the public stocks or funds of Great Britain, or upon Government or real security in England, Wales, or Ireland, with power to alter, vary, and transpose such stocks, funds, and securities into or for other stocks, funds, and securities; and shall pay the interest, dividends, and annual produce of such trust monies, stocks, funds, and securities, for the maintenance and education of O. P., of &c., until he shall attain the age of twenty-one years; And after the said O. P. shall attain the age of twenty-one years, shall pay the same interest, dividends, and annual produce unto the said O. P. until he shall attain the age of twenty-five years; And when the said O. P. shall attain the age of twenty-five years, shall transfer the said trust monies, stocks, funds, and securities unto the said O. P. for his own use; And in case the said O. P. shall die under the age of twenty-five years, I DIRECT that the said last-mentioned trust monies, stocks, funds, and securities shall sink into and form part of my residuary personal estate. AND I DECLARE that the trustees or trustee for the time being of this codicil may, during the minority of the said O. P., either themselves or himself, pay and apply the said interest, dividends, and annual profits for the maintenance and education of the said O. P.; or may pay the same to the father, or guardian or guardians, of the said O. P., without being responsible for the loss, misapplication, or nonapplication, or being bound to see to the application, or to require any account of the

application thereof. And I declare that the provisions in my said will contained for the indemnity of trustees, and for the appointment of new trustees, shall be applicable to the said J. K. and M. N., as if the said J. K. and M. N. had been by my said will appointed trustees. And I declare that all the bequests in this codicil shall be free from legacy duty; and in all other respects I confirm my said will. In witness, &c.

No. XXXI.

CODICIL *giving Directions as to Funeral.—Revoking some Legacies.—Altering other Legacies.—And forgiving a Debt due to the Testator.*

I, A. B., of &c., DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——.

Directions as to funeral.

I DESIRE, that, in case I die within —— miles of ——, I be buried in the churchyard of ——, in the grave in which my late wife is buried. I particularly desire that my funeral be conducted with the utmost simplicity, and that no greater sum than £—— be expended on my said funeral.

Revocation of legacies.

I REVOKE all the legacies by my said will given to or for the benefit of C. D., E. F., and G. H. I REVOKE the bequest in my said will of my plate to I. K. I REVOKE all the bequests in my said will to or in favour of M. N. and O. P., other than the said legacies of £—— and £—— by my said will bequeathed to the said M. N. and O. P. respectively.

Revocation of legacies and bequest of others in lieu thereof.

I REVOKE the legacy of £—— by my said will bequeathed to R. S.; and in lieu thereof I bequeath to the said R. S. the sum of £——. I REVOKE the legacy of £—— by my said will bequeathed to T. U.; and in lieu thereof I bequeath to the said T. U. the sum of

£——. And I direct that the said legacies hereinbefore bequeathed to the said R. S. and T. U. shall be paid within three calendar months from my death. And I remit and forgive X. Y., of &c., all money, whether principal or interest, which he shall owe to me at my death. And I direct that all the legacies given by this codicil, including the debt so forgiven to the said X. Y., shall be free from legacy duty. And in all other respects I ratify and confirm my said will. In witness &c.

Forgiving a debt.

No. XXXII.

CODICIL *bequeathing Articles described in the Will as in the Testator's House, and since removed.*

I, A. B., of &c., DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——. WHEREAS, since the date of my said will, the following articles, forming part of the plate and household furniture in my house at ——, by my said will bequeathed to C. D., have been removed from my said house, that is to say (*Description of articles*): Now I hereby bequeath all the said articles hereinbefore described unto the said C. D., his executors and administrators. And in all other respects I ratify and confirm my said will. IN WITNESS &c.

No. XXXIII.

CODICIL *by an Uncle who had paid a Sum of Money to a Legatee under his Will, declaring that the Money so paid was not in Satisfaction of the Legacy.*

I, A. B., of &c., DO DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——. WHEREAS, since the execution of my said will, I have paid to or for the benefit of my nephew, C. D., of &c., various sums of money. I DECLARE that the said sums so paid by me shall not be considered as in satisfaction, or in part satisfaction, of any legacy given by my said will, or any codicil thereto, to or for the benefit of the said C. D. And in all other respects I ratify and confirm my said will. IN WITNESS &c. (*a*).

(*a*) The effect of this codicil is to preclude any question as to double portions, which might arise if the testator stood in loco parentis to the legatee. See the observations in the Introduction upon the subject of double portions, and as to who will be held to stand in loco parentis. If the testator be the father of the legatee, in the absence of this codicil, the payment to the legatee would be presumed to be in satisfaction pro tanto of the legacy.

No. XXXIV.

Codicil *declaring that Money paid by the Testator shall be in Satisfaction pro tanto of Share of Residue given by the Will.*

I, A. B., of &c., do declare this to be a codicil to my will, dated the —— day of ——. Whereas, since the date of my will, I have paid sums amounting together to £——, to or for the benefit of the said C. D., of &c. Now I hereby declare that the said C. D. shall not be entitled to any benefit under my said will without bringing the said sum of £—— into hotchpot, and accounting for the same accordingly. And in all other respects I ratify and confirm my said will. In witness &c.

No. XXXV.

CODICIL *declaring that Property in a particular Locality purchased since the Date of the Will shall not be comprised in Devise in the Will.*

I, A. B., of &c., DO DECLARE THIS TO BE A CODICIL TO MY WILL dated the —— day of ——. WHEREAS, since the date of my will, I have purchased certain real estates at ——. Now I hereby declare that the real estates in —— aforesaid, purchased by me since the date of my said will and before the date of this codicil, shall not be comprised in or pass by the devise in my said will of real estates in ——, but the same estates so purchased by me shall form part of my residuary real estate devised by my said will. And in all other respects I ratify and confirm my said will. IN WITNESS &c.

No. XXXVI.

Will *of a Married Woman made in pursuance of a Power in that behalf contained in the Will bequeathing the Property in respect of which the Will is made, Upon Trust to apply the Produce for the Benefit of a Man, and after his Death upon Trust for the Next of Kin of the Testatrix.*

A. B., of &c., the wife of C. D., of &c., in exercise of every power or authority enabling me in this behalf, DO DECLARE THIS TO BE MY LAST WILL.

Recital of will creating the power.

WHEREAS my late uncle E. F., of &c., duly made his will dated ——, and thereby bequeathed unto J. K. and M. N., their executors, administrators and assigns, the sum of £——, upon trust, with such consent or at such discretion as in the same will mentioned, to invest the same upon the stocks, funds, and securities in the same will mentioned, with power to alter or vary such stocks, funds, and securities, as in the same will mentioned; And upon trust to stand possessed of and interested in the said trust monies, stocks, funds, and securities, upon the trusts therein mentioned, during the joint lives of myself and

the said C. D., and the life of the survivor of myself and the said C. D.; And after the death of such survivor, upon the trusts and subject to the powers therein mentioned, being for the children of me and the said C. D. And the said E. F. did thereby declare, that, in case there should be no child of me by the said C. D., who being a son should attain the age of twenty-one years, or being a daughter should attain that age or marry, then that the said I. K. and M. N. and the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of the same will, should hold the said sum of £——, or so much thereof as should not have become vested or been applied under any of the trusts or powers in the same will mentioned, being trusts and powers for the advancement of any of my children by the said C. D., and of the stocks, funds, and securities upon which the same or any part thereof may be invested, in case the said C. D. should die in my lifetime, upon trust for me the said A. B., my executors and administrators; but in case I should die in the lifetime of the said C. D., then from and after the death of the said C. D., and such default or failure of children as aforesaid, upon such trusts and for such ends, intents, and purposes as I the said A. B. should by my will or any codicil thereto, or any writing in the nature of or purporting to be a will or codicil, direct or appoint.

AND WHEREAS there have been issue of the Recital of

failure of issue of testator.

marriage between me and the said C. D. two children only, both of whom died infants and without having been married.

Appointment to trustees.

Now, PURSUANT to and by force and in execution of the powers to me for this purpose given by the said will of the said E. F. and of every other power enabling me in this behalf, I do by this my will direct and appoint, that, in case there shall be no child of me by the said C. D., who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then from the death of the said C. D. and such default or failure of children as aforesaid, which shall last happen, the said J. K. and M. N., their executors, administrators and assigns, shall hold the said trust monies, stocks, funds, and securities, or so much thereof as shall not have become vested or been applied under the trusts or powers of the said will of the said E. F., UPON TRUST to pay or transfer the same unto O. P., of &c., and R. S., of &c., or the survivor of them, or the executors or administrators of such survivor. AND I DECLARE that the said O. P. and R. S. and the survivor of them, and the executors and administrators of such survivor (hereinafter called the trustees or trustee), shall hold the said trust monies, stocks, funds and securities, when the same shall be paid or transferred to them or him, upon trust to permit the same or any part thereof to remain in its then state of investment, or upon trust, at the discretion of the said trustees or trustee, to call in and convert the same or any

Upon trust to pay the annual produce to, or apply the same for the benefit of, T. U. for his life;

part thereof into money, and to invest the same upon any of the Parliamentary stocks or public funds of Great Britain, or upon Government or real security in England, Wales, or Ireland, or upon the loan notes, debentures, or other security of any railway or other company in Great Britain or Ireland, incorporated and paying a dividend on the original stock or shares of such company; and with power to alter, vary, and transpose the said trust monies, stocks, funds or securities into or for others of the same or a like nature; and shall, during the life of T. U., of &c., either pay the interest, dividends, and annual produce of the same trust monies, stocks, funds, and securities unto the said T. U., or shall at the discretion of the said trustees or trustee pay or apply all or any part of the said interest, dividends, and annual produce for the benefit of the said T. U.. either by paying for any necessaries or other articles furnished to or for the use of the said T. U., or in payment either in whole or in part of any debts to be contracted by the said T. U., or by any payment to any person or persons for the benefit of the said T. U. as the said trustees or trustee for the time being shall think fit, without being required to see to the application or being responsible for the misapplication or nonapplication of any such interest, dividends, or annual produce; AND shall hold all such parts of the same interest, dividends, and annual produce as shall not from time to time be applied as aforesaid, and also all the said principal, trust

—and after his death to hold the principal in trust for X. Y.

monies, stocks, funds, and securities, from the death of the said T. U. in trust for X. Y., of &c., his executors and administrators. AND I APPOINT the said J. K. and M. N. executors of this my will. AND I DECLARE that (*Trustees' receipt clause; Power to appoint new trustees, pp.* 195, 196). IN WITNESS &c. (*a*)

Appointment of executors.

Trustee clauses.

(*a*) If the will of a married woman be required by the instrument creating the power to be executed in any particular manner, the will should be executed in accordance with such instrument. As to appointment by will in pursuance of a power to appoint by deed or writing, see the observations in the Introduction on the case of *West* v. *Ray*.

No. XXXVII.

WILL *of Real and Personal Property, including Mining Property and Advowsons.—Devise of Mansion-house to C. D. for Life.—Devise of Advowson to Trutees for Ninety-nine Years.—Devise of Rent-charge to C. D. for Life.—Devise of Real Estate to Trustees for 500 Years, with Remainder in Strict Settlement.—Trusts of Term of 500 Years to raise Annual Sum for the Person entitled under the Will for Fifteen Years from Testator's Death,—to work Mines during said Term of Fifteen Years,—and to invest the Residue of Rents and Profits, and accumulate the same, during the said term of Fifteen Years.—Powers of Jointuring and Charging Portions.—Power to grant Leases, Building Leases, and Mining Leases.—Power of Sale and Exchange.—Devise and Bequest of Copyhold and Leasehold Estates.—Bequest of Engines, &c., belonging to Mines.—Bequest of Household Goods as Heirlooms.—Bequest of Personalty upon*

Trust to pay Debts and Legacies.—Appointment of Executors.—Appointment of Auditors.—Provision for Payment of Trustees.—Trustee Clauses.

THIS IS THE LAST WILL of me, A. B., of &c. I DEVISE all my real estate TO THE USE of the heirs of my body; and in default of such issue, as to my mansion-house called ——, with the out-offices, gardens, park, and appurtenances, TO THE USE of C. D., of &c., during his life. AND as to all my advowsons, right of patronage and presentation, TO THE USE of E. F., of &c., and G. H., of &c., for ninety-nine years, if the said C. D. shall so long live, UPON TRUST when any living, the advowson whereof is hereby devised, shall become vacant, to present the persons I shall nominate by any codicil; And in default of such nomination, or if the nominee shall die or refuse to accept such living, then to present such persons as the said C. D. shall nominate. AND as to all my real estates, except the premises limited to the said C. D. for his life, and except the premises comprised in the said term of ninety-nine years, TO THE USE that the said C. D. may from my death receive during his life the annual sum of £ —— by equal half-yearly payments, on the —— day of ——, and the —— day of —— in every year; the first payment to be made on the day of payment next after my death; AND TO THE USE (*Powers of distress and*

Devise of house to C. D. for life.

Of advowson to trustee for 99 years.

Gift of rent-charge to C. D. for life.

entry, p. 240). AND as to my said real estate (except the premises limited to the said C. D. during his life, and except the premises comprised in the said term of ninety-nine years), subject to the said rent-charge of £——, and the powers of recovery thereof, TO THE USE of the said E. F. and G. H. for the term of 500 years from my death, without impeachment of waste. AND as to the premises comprised in the said terms of 99 years and 500 years respectively, after the expiration of the same terms and in the meantime subject thereto and to the trusts thereof, and as to the premises limited to the said C. D. for his life, from his death TO THE USE of J. K., eldest son of the said C. D., for his life, without impeachment of waste; with remainder TO THE USE of the first and other sons of the said J. K. successively, according to seniority, in tail; with remainder TO THE USE of M. N., second son of the said C. D., for his life, without impeachment of waste; with remainder TO THE USE of the first and other sons of the said M. N. successively, according to seniority, in tail; with remainder TO THE USE of the third and every subsequently born son of the said C. D uccessively, according to seniority, in tail; with remainder TO THE USE of the first and other daughters of the said J. K., sucessively, according to seniority, in tail; with remainder to the use of the first and other daughters of the said M.N., successively, according to seniority, in tail; with remainder to the use of O. P., daughter of the said C. D., for her life, with-

Devise of real estate to trustees for 500 years.

With remainder in strict settlement.

out impeachment of waste; with remainder To THE USE OF the first and other sons of the said O. P., successively, according to seniority, in tail; with remainder To THE USE of the first and other daughter of the said O. P., successively, according to seniority, in tail; with remainder To THE USE of every subsequently born daughter of the said C. D. successively, according to seniority, in tail; with remainder To THE USE of R. S., of &c., in fee. AND I DECLARE that the premises hereby devised to the said E. F. and G. H. for the term of 500 years, were so devised to them UPON TRUST, by mortgage of all or any of the same premises for all or any part of the same term, to raise such money as shall be required in aid of my personal estate to pay my debts, legacies, (except legacies for charitable uses), and funeral and testamentary expenses; And UPON FURTHER TRUST, during the term of fifteen years for which an accumulation is hereby directed, or such part thereof as the said J. K. or any issue of his body, or the said M. N. or any issue of his body, or any other issue of the said C. D. shall be in existence and for the time being entitled under this my will to the premises comprised in the said term of 500 years in possession or in remainder expectant on the same term, to raise out of the rents and profits of the same premises such annual sum as the trustees or trustee for the time being of the said term of 500 years shall think fit, not exceeding, during such part of the said term of fifteen years as the said C. D.

Trusts of term of 500 years, to raise annual sums for persons entitled, for 15 years from testator's death.

shall be living, and the person entitled in possession or remainder expectant on the said term of 500 years shall be under the age of twenty-one years the annual sum of £——, and not exceeding, during such part of the same term of fifteen years as the said C. D. shall be living, and the said person so entitled as aforesaid shall be over the age of twenty-one years, the annual sum of £——; And in case the said C. D. shall die during the said term of fifteen years, then, during the residue of the same term, any annual sum not exceeding £—— while the person for the time being entitled as aforesaid shall be under the age of twenty-one years, and not exceeding the sum of £—— after the person for the time being entitled as aforesaid shall have attained the age of twenty-one years; And shall pay or apply such annual sum as shall for the time being be raisable, unto or for the benefit of the person for the time being entitled to the premises comprised in the same term of 500 years in possession or in remainder expectant on the same term, as the trustees or trustee for the time being of the same term shall in their or his discretion think fit; And the same trustees or trustee may pay the same to any parent or guardian of any minor, without being required to see to the application of any money paid to such parent or guardian, and without being responsible for the loss, misapplication, or nonapplication of any such money; AND UPON TRUST, out of the rents and profits of

the premises comprised in the same term of 500 years, to raise such annual sums as the trustees or trustee of the same term shall think fit, not exceeding £—— a piece for each child of the said C. D. other than an eldest or only surviving son, or eldest or only surviving daughter, for the time being entitled to the premises comprised in the said term of 500 years in possession or in remainder expectant on the same term, until each such child being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, And apply such such annual sum for the maintenance or education of the child for whom the same shall be raised, in such manner as the said trustees or trustee for the time being shall think fit; And the same trustees or trustee may pay the same to any parent or guardian of any minor, without being required to see to the application of any money paid to such parent or guardian, and without being responsible for the loss, misapplication, or nonapplication of any such money; And UPON TRUST, as such child of the said C. D. (except an eldest or only surviving son or daughter for the time being entitled as aforesaid), being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, out of the rents and profits of the same premises, or by mortgage or sale thereof for all or any part of the said term of 500 years, or by any other reasonable means, to raise and pay to each such child of the said C. D.

who shall attain the age of twenty-one years (except an eldest or only son for the time being entitled as aforesaid,) the sum of £——; And to raise and pay to each daughter of the said C. D. who shall attain the age of twenty-one years or be married (except an eldest or only surviving daughter for the time being entitled as aforesaid,) the sum of £——. AND I DECLARE that it shall be lawful for the trustees or trustee for the time being of the said term of 500 years, at their or his discretion, during the minority of any son of the said C.D. for whom a portion is intended to be hereby provided, to raise any part, not exceeding £——, of the expectant or presumptive portion of such son, And to apply the money so to be raised for the preferment, advancement, or benefit of the son for whom the same shall be raised, in such manner as the trustees or trustee shall think fit. AND I DECLARE that it shall be lawful for the trustees or trustee for the time being of the said term of 500 years, during the said term of fifteen years from my death if they or he shall think fit, to work any mines, veins, beds, and quarries of coal, iron, ironstone, limestone, and other mines and minerals whatever, metallic or earthy, at my death, upon, in, or under any of the premises devised, or in or under any hereditaments which shall be purchased pursuant to the directions of this my will; and also to search for, open, and work any mines, veins, beds, or quarries of coal, iron, ironstone, limestone, or other

Power of advancement.

Power for trustees of term of 500 years to work mine during term of 15 years.

mines or minerals whatever, metallic or earthy, not before opened or worked, in or under any of the premises hereby devised, or in or under any hereditaments which shall be purchased pursuant to the directions of this my will; And to carry on all forges, foundries, and works existing upon the premises comprised in the said term of 500 years at my death; and to erect and establish such other works thereon as they or he may think fit after my death, and to transact or cause to be transacted all matters relating to the said mines and works; and to enlarge or contract the capital employed in any existing works; and to employ such persons as overseers, agents, clerks, workmen or otherwise, at such salaries or wages, and to enter into such contracts, agreements, and engagements, as they or he shall think proper; and to adjust and settle all accounts and transactions relating thereto, and settle and compromise any debts to be contracted in working and carrying on the said mines, minerals, and iron works, and generally to transact all matters respecting the same; And to do or cause to be done the before-authorised and all other acts and deeds necessary or relative thereto, in like manner in all respects as if they or he were or was absolutely and beneficially entitled to and interested in the premises. AND I DIRECT that all losses and expenses of carrying on the said mines and iron works, and all profits arising therefrom, shall be paid out of and considered as part of the rents and profits of

the premises comprised in the said term of 500 years and be applied accordingly. And in case the trustees or trustee for the time being of the said term of 500 years shall deem it inexpedient to continue any such mines or works, or having been engaged therein shall discontinue any such mines or works, then such mines or works which shall not be continued or which shall be discontinued, may be demised in manner hereinafter mentioned. AND I DECLARE, that the trustees or trustee for the time being of the said term of 500 years shall, during the term of fifteen years from my death, receive the residue of the rents and profits of the said premises comprised in the said term of 500 years, and of the said mines and iron works as aforesaid, and apply the same or so much thereof as they or he shall think fit in discharge of any money raisable out of or charged upon any of the premises comprised in the said term of 500 years, either under the trusts of the same term or under any power herein contained, and shall invest the residue of such rents and profits or so much thereof as shall not be applied in manner aforesaid in the purchase of any hereditaments in fee simple in possession situate in Great Britain, or of copyhold or leasehold hereditaments convenient to be held therewith or with the premises hereby devised; And shall settle or cause to be settled the hereditaments to be purchased in the manner hereinafter expressed with respect to estates to be pur-

Trusts of term of 500 years, to invest the residue of the rents accruing during term of 15 years in the purchase of real estate.

chased with money produced by any sale made in pursuance of the power of sale hereinafter contained of any hereditaments hereby devised and hereby authorised to be sold. AND I DIRECT that the rents and profits of any estate purchased under the direction hereinbefore contained shall, for the term of fifteen years from my death, be received by the trustees or trustee for the time being of the said term of 500 years, and applied in like manner as is hereinbefore directed with respect to the rents and profits of the hereditaments originally comprised in the same term. AND I DECLARE, that, during the said term of fifteen years from my death until the rents and profits of the hereditaments comprised in the same term of 500 years or such residue thereof as aforesaid shall be applied as hereinbefore directed, the trustees or trustee for the time being of the said term of 500 years shall accumulate the same, by investing the same and the produce thereof in their or his names or name, in any of the parliamentary or public stocks or funds of Great Britain, or upon Government or real securities in England or Wales, to be from time to time altered or varied at the discretion of the same trustees or trustee; And after the expiration of the said term of fifteen years, the annual produce from such accumulated fund, or so much thereof as shall remain undisposed of, shall, until the same fund shall be actually disposed of, be paid and applied to such persons and in such manner as the rents and profits of real estates to be pur-

—and to accumulate the said rents until invested

chased therewith would go or be applicable, in case such purchases and settlements as aforesaid were actually made. AND I DECLARE, that, after the expiration of the said term of fifteen years from my death, the rents and profits of the hereditaments comprised in the said term of 500 years subject as aforesaid, or so much thereof as shall remain after answering the purposes of the same term, shall, until the same shall be required for any of the purposes hereinbefore declared, be received by the person for the time being entitled to the same hereditaments in remainder expectant on the same term under this my will. AND I DECLARE, that the receipts of (*Trustees' receipt clause, p.* 195). AND I DECLARE, that it shall be lawful for the said C. D. after my death by deed or will to appoint (*Power to jointure, p.* 277). AND I DECLARE, that it shall be lawful for every of them the said J. K., M. N., and O. P., when by virtue of this my will they shall respectively be entitled in possession or in remainder expectant on the said term of 500 years to the hereditaments comprised in the same term, by deed with or without power of revocation, or by will or codicil, but subject to the life estate of the said C. D. and the rent charge and powers hereinbefore given to him, and to the said terms of ninety-nine years and 500 years and the trusts thereof (except the trusts of the said terms of 500 years for accumulating the rents and profits during the said term of fifteen years from my death), to ap-

Trustees' receipt clauses.

Power to jointure.

point to or in trust for any person whom any of them the said J. K., M. N., and O. P., so becoming entitled as aforesaid, respectively may marry, either before or after marriage, for the life of any such person, such yearly rent-charge or rent-charges as follows (that is to say), as to any yearly rent-charge to be appointed within the term of fifteen years from my death, any rent-charge or rent-charges not exceeding in the whole the yearly sum of £—— (but with power in that case to make an appointment after the expiration of such term of any rent-charge not exceeding in the whole the yearly sum of £——); And as to any rent-charge to be appointed after the expiration of the said term of fifteen years, and in the event of no previous appointment, any rent-charge or rent-charges not exceeding in the whole the yearly sum of £——, such rent-charges to be issuing out of and charged upon all or any part of the hereditaments hereby devised; And for the purpose of securing any rent-charges so to be appointed, to limit usual powers of distress and entry, and to create any term of years in the premises so to be charged to secure such rent-charge. AND I DECLARE, that the premises hereby devised shall not, under any of the powers hereinbefore contained, be liable to the payment at one time of any sums of money exceeding in the whole the yearly sum of £——; And that such rent-charges shall have priority of payment according to the priority in order of limitation of the respective estates of the several persons ex-

ercising the said powers. AND I DECLARE (*Power for tenants for life to charge with portions for younger children to the extent of £——; Proviso that estates shall not be charged with more than £—— for portions, pp. 252, 253*). AND I DECLARE, that it shall be lawful for the trustees or trustee for the time being of the said term of 500 years during the said term of fifteen years from my death, and after the said term of fifteen years, for each of them the said J. K., M. N., and O. P., when in possession or entitled to the rents of the premises comprised in the said term of 500 years, and for X. Y., of &c. and Y. Z., of &c., and the survivor of them, and the heirs and assigns of such survivor (hereinafter called the trustees or trustee) during the minority of any child or children of the said J. K., M. N., and O. P., or of any future child or children of the said C. D. entitled for an estate in tail in possession to the premises comprised in the said term of 500 years, to appoint all or any part of the premises hereby devised (except, during the life of the said C. D., the premises limited to him during his life) to any person (*Power of leasing for twenty-one years; Power to grant building leases for ninety-nine years, p. 323*); And to appoint by way of lease all or any of the mines, veins, seams, beds, and strata of coal, iron, iron-stone, lime, clay, and other mines and minerals, either metallic or earthy, and all or any of the forges, foundries, and iron-works opened, found, discovered, or

—and to charge with portions.

Power of leasing

Power to grant mining leases.

erected, or to be opened, found, discovered, or erected, in, under, or upon any of the premises hereby devised (except, during the life of the said C. D., as to the premises limited to him for his life) either alone or together with any engines, forges, furnaces, machinery, implements, chattels, or effects employed in or upon the same, and subject to the trusts of this my will, to any person or persons, for any term not exceeding forty years to take effect in possession, with such powers both over the said mines and the surface of the said lands and the works erected and to be erected thereon, as shall be advisable for the carrying on such mines and other works; and also power to remove at the end of such term all or any engines, machinery, tackle, gear, and articles whatsoever, as he or they shall have erected or placed in or upon the said demised premises, so as upon every such appointment by way of lease there be reserved during the term thereby created the best yearly rent or rents, royalties, or other reservations to be incident to the reversion of the premises so to be appointed, without any fine, premium, or foregift; and so as in every of them there be contained a condition of re-entry on nonpayment within a reasonable time, to be thereby specified, of the rent or rents, royalties, or reservations thereby reserved; And so as the several appointees do execute counterparts thereof, and do enter into such covenants and agreements for duly working and managing the said mines and works, and for rendering and paying the rents, roy-

alties, and reservations thereby to be reserved; And for permitting the lessors, or other the person or persons for the time being entitled to the immediate reversion of the premises, to enter upon and view the state of the works thereof, and inspect and examine all entries and accounts relative thereto, and also such other powers and agreements as are usual or necessary in such cases. AND I DECLARE that it shall be lawful for the said trustees or trustee during the life of any of them the said J. K., M. N., and O. P., who shall be entitled, in possession or in remainder expectant on the said term of 500 years, to the premises comprised in the said term, or to any hereditaments to be acquired under this present power, and shall be of the age of twenty-one years; and in the case of the said O. P., notwithstanding coverture, at the request of such person so entitled, and with the consent in writing of the trustees or trustee for the time being of the said term of 500 years, during the said term of fifteen years from my death, to dispose of, either by way of sale or in exchange for hereditaments in Great Britain, all or any of the premises hereby devised (except during the life of the said C. D. the premises hereby limited to him for his life, and except the premises comprised in the said determinable term of ninety-nine years during its continuance), to any person; and for effecting any such sale or exchange, at such request and by such direction as aforesaid, and with such consent during the said term of fifteen

Power of sale and exchange.

years, by deed to revoke the uses, trusts, and powers herein contained and then subsisting of and in the hereditaments so to be sold or given in exchange, and any estate to be created under any power herein contained, except under any of the aforesaid powers of leasing, and to declare any new uses thereof; And upon any such exchange to give or receive any money for equality of exchange; And also, that, upon any such sale or exchange, any receipt of the said trustees or trustee shall effectually discharge the person taking such receipt from the money in such receipt acknowledged to be received, or from being answerable for the misapplication or nonapplication, or from being bound to see to the application thereof.

Trusts of money to arise on sale or exchange.

AND I DECLARE, that the said trustees or trustee shall apply the money to be received on any such sale or for equality of exchange, or any part thereof, in or towards payment of any money charged on or affecting any of the premises hereby devised, under the trusts of the said term of 500 years or any of the powers herein contained or otherwise, and shall invest the whole or the residue of such monies, as the case may be, in the purchase of manors, lands, mines, or hereditaments in fee simple in possession, situate in England or Wales, or of lands, mines, or hereditaments of a copyhold, or customary, or leasehold tenure convenient to be held therewith, or with the premises hereinbefore devised or any part thereof; And that (*Directions to settle lands to be purchased, p. 255; Provision for renewal of*

leaseholds, p. 284). AND I DECLARE, that so long as any money arising from such sale or exchange as aforesaid shall remain uninvested in real estate, the said trustees or trustee shall invest such money in their or his names or name in any of the Parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England or Wales, but not in Ireland, and shall from time to time alter, vary, and transpose such stocks, funds, or securities, at their or his discretion, and shall apply the interest, dividends, and annual produce of such stocks, funds, and securities, to the persons and in the manner to and in which the rents and profits of the estates to be purchased therewith would go and be payable if such purchase and settlement as aforesaid had been actually made. AND I BEQUEATH AND DEVISE my leasehold messuage at ——, with the coach-house, stables, and appurtenances, and all my copyhold, customary, or leasehold hereditaments, unto the said X. Y. and Y. Z., their heirs, executors, and administrators, according to the tenure thereof, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers and provisoes as shall as nearly correspond with the uses, trusts, intents, and purposes, powers, and provisoes hereinbefore declared of the premises comprised in the said term of 500 years, as the different tenures of the properties and the rules of law and equity will admit, but not so as to increase or multiply charges. AND I BEQUEATH unto the said E. F. and G. H.

Trusts of money arising from sale or exchange until invested

Gift of leasehold house in London, and of copyhold and leasehold estates, upon trusts corresponding with use of freehold

Bequest of

engines, &c., belonging to mines, in trust to be enjoyed with the estates to which they are annexed

all the fire, steam, and other engines, forges, furnaces, machinery, railways, tools, implements, articles, and things of the nature of personal chattels, used or employed in or about any mines, iron-works, quarries, or other concerns wherein I shall be interested at my death either absolutely or partially, In trust to permit the same respectively to go and be held with the mines, iron-works, quarries, and other concerns to which the same respectively shall belong, or on which the same shall have been employed, so far as the rules of law and equity will admit, by the person for the time being entitled to the possession or the receipt of the rents and profits of the same mines, iron-works, quarries, and concerns, and to be demised therewith if thought advisable under the power of leasing hereinbefore contained, yet so that the same shall not vest absolutely in any person entitled under this my will as tenant in tail, unless such person shall attain the age of twenty-one years, or die under that age leaving issue.

Power for the trustees, during the term of fifteen years, to sell the said effects.

AND I AUTHORISE the said trustees or trustee for the time being of the said term of 500 years, during the said term of fifteen years from my death, to sell all or any of the engines, forges, furnaces, machinery, implements, chattels, and effects hereinbefore bequeathed, and out of the monies to arise from any such sale, or out of my personal estate, or out of the rents and profits of the premises comprised in the said term of 500 years, to purchase any other engines, forges, furnaces, machinery, implements,

chattels, and effects which they or he may deem necessary either in lieu of or in addition to any engines, forges, furnaces, machinery, implements, chattels, and effects, and to be held upon the trusts and powers hereinbefore expressed thereof. AND I DECLARE, that the whole or so much of the money to arise from any such sale of engines, forges, furnaces, machinery, implements, chattels, and effects, as shall not be laid out in the purchase of other articles of a like nature, shall be held upon the trusts and with the powers hereinbefore declared of the money to arise from any sale of my real estates hereinbefore devised under the power of sale hereinbefore contained. AND I BEQUEATH unto the said E. F. and G. H. all my household goods, furniture, jewels, plate, plated articles, linen, china, glass, mirrors, bookcases, books, manuscripts, statues, busts, pictures, prints and curiosities of every description in or about my mansions at —— and —— respectively, In trust to permit the same respectively to be held with my said mansions respectively, so far as the rules of law and equity will permit, by the person or persons for the time being entitled to the possession or the receipt of the rents and profits of the same mansions respectively by or under the limitations herein contained, yet so that the same shall not vest absolutely in any person entitled under this my will as tenant in tail of my said mansion at ——, unless such person shall attain the age of twenty-one years, or die under that age leaving issue. AND I DIRECT

And to purchase other engines, &c.

Bequest of household goods, &c., as heirlooms.

Directions

For inventories.

THAT (*inventories to be made, p.* 285). AND I BEQUEATH unto the said E. F. and G. H., their executors, administrators, and assigns, all my monies, stocks, funds, chattels, and personal estate not hereby otherwise disposed of, upon trust, with all convenient speed, to sell, call in, and convert into money all such parts thereof as shall not consist of money, and out of the money to arise from such sale, calling in, and conversion, and the money of which I shall die possessed, to pay my debts, funeral and testamentary expenses, and the legacies given by this my will or any codicil hereto; And to hold all the residue of the said money to arise from such sale, calling in, and conversion into money, and of the money of which I shall die possessed, upon and for the trusts, intents and purposes, and with and subject to the powers hereinbefore declared concerning the money to arise from any sale of my real estates under the power of sale thereof hereinbefore contained.

Bequest of personalty upon trust to pay debts and legacies, and hold the surplus upon like trusts as money arising from sale of real estate.

I DEVISE all the estates vested in me by way of mortgage, with the appurtenances, unto the said E. F. and G. H. (*Devise of mortgage estates, p.* 194).

Devise of mortgage estates.

AND I APPOINT the said E. F. and G. H. executors of this my will.

Appointment of executors.

AND I HEREBY AUTHORISE (*Power for executors to compromise, p.* 195). AND I DIRECT that the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, their or his assigns, and any trustee or trustees to be appointed in their or his place, shall during the term of fifteen years from my

Directions as to audit of accounts.

death and afterwards while any trust monies to arise under this my will shall remain in their or his hands, yearly in the month of —— make out a perfect account in writing of all receipts and payments in or about the execution of the trusts or powers hereby reposed or authorised to be reposed in them or him, and shall submit every such account to the audit and examination of T. U., of &c., or in case of his death or refusal, or neglect, or becoming incapable to act, then to the audit and examination of two persons to be from time to time nominated for that purpose, one by the said last-mentioned trustees or trustee for the time being, and the other by the said C. D. during his life, and after his death by the person or persons for the time being entitled in remainder expectant on the determination of the said term of 500 years to my said real estates if of full age, but if under age then by his or her guardian or respective guardians during his, her, or their minority or respective minorities. And in case the said C. D. or such other person or persons, or such his, her, or their guardian or respective guardians shall refuse or neglect to name an auditor for the purpose aforesaid within twenty-one days after he, she, or they shall be requested in writing so to do by the said trustees or trustee for the time being of the said term of 500 years, then the auditor to be named by such last-mentioned trustees or trustee shall choose a co-auditor; And the two auditors to be named by any of the means aforesaid shall be

Appointment of auditors.

at liberty to choose an umpire to determine any difference that may arise or may have arisen between them respecting any such accounts or any item or items therein. AND I DECLARE, that the allowance in writing of the said T. U., if and when he shall act as such auditor, and after his death, refusal, neglect, or becoming incapable to act, then of the two auditors to be named by any of the means aforesaid, or of such their umpire, of any account or of any item in any account, shall be binding upon all persons claiming under this my will. AND I AUTHORISE the trustees or trustee for the time being of the said term of 500 years to pay to the said T. U., while he shall act as such auditor, the yearly sum of £——, and to pay to each auditor and umpire to be appointed as hereinbefore is mentioned, the yearly sum of £——. AND I AUTHORISE the trustees or trustee for the time being of the said term of 500 years to retain during the said term of fifteen years from my death the annual sum of £——, to be divided among such trustees or trustee for the time being of the said term of 500 years as a compensation for the labour of executing the trusts of this my will over and above all expenses. AND I DECLARE, that (*Trustees' receipt clause, p.* 195). AND I DECLARE, that if the trustees hereby appointed or any of them shall die in my lifetime, or disclaim, or if they or any of them, or any trustee or trustees to be appointed as hereinafter provided, shall after my death die or be abroad or desire to be discharged,

Allowance of accounts to be final.

Provision for payment of auditors.

Provision for payment of trustees.

Trustee clauses.

or refuse or become incapable to act, it shall be lawful for the surviving or continuing trustees or trustee of the same premises respectively (and for this purpose a refusing or retiring trustee, if willing to act in the execution of this power, shall be considered a continuing trustee) or for the acting executors or executor, administrators or administrator of the last surviving or continuing trustee of the same premises respectively (*Appointment of new trustees; and Trustees' indemnity clause, p.* 196). IN WITNESS &c.

No. XXXVIII.

WILL *of* REAL *and* PERSONAL PROPERTY. *—Devise of Real Estates for Life, and in Tail—Tenants in Tail, born in Testator's Lifetime, to take Life-estates only —Names and Arms Clause, with Provisions in the case of a Peer.—Provision for Accumulation of Rents, in case of a Suspense of Vesting of the Estates. —Trusts for Management during Minority.—Power to jointure and charge with Portions.—Power to grant Leases. —Power to grant Licenses to Copyholders to lease.—Power of Sale and Exchange.—Devise of Copyholds, and Bequests of Leaseholds upon Trusts corresponding with the Uses of Freeholds.—Bequest of Leasehold House.—Bequest of Plate as Heirlooms.—Bequest of Household Furniture.—Bequest of Personalty upon Trust to invest in the Purchase of Real Estate.—Power to set apart Part of Personalty to answer Annuities.—Appointment of Executors. — (Usual Clauses).*

THIS IS THE LAST WILL of me, A. B., of &c., I DEVISE all my real estates, except what I otherwise devise, and except estates vested in me as trustee or mortgagee, TO THE USE of C. D., of &c., for his life, without impeachment of waste; with remainder TO THE USE of E. F., the eldest son of the said C. D., during his life, without impeachment of waste; with remainder TO THE USE of the first and every other son of the said E. F., successively, according to seniority, in tail male; with remainder TO THE USE of the right heirs of my late father, G. H. AND I DECLARE that if any person whom I have made tenant in tail male of the real estates hereby devised, or whom I shall by this my will make tenant in tail male of the estates hereinafter directed to be purchased with my residuary personal estate, is now born or shall be born before my death or in due time after, the estate in tail male given to such person shall cease, and in lieu thereof I devise the hereditaments hereinbefore limited, and hereinafter limited, or directed to be limited for such estate or estates in tail male, to the person whose estate or estates in tail male shall so determine, for his life, without impeachment of waste; with remainder TO THE USE of his first and second sons successively, according to seniority, in tail male. PROVIDED ALWAYS that any person not being E. of C., and not bearing the surname of ——, who under the limitations hereinbefore contained, or under any limitation hereinafter contained or directed to be limited

Devise of real estates to C. D. for life, remainder to E. F. for life, with remainder to his first and other sons in tail male, with an ultimate remainder to the right heirs of testator's father.

Person born in testator's lifetime to take only life estate.

Name and arms clause, with reference to the case of a Peer.

of the estates directed to be purchased with my residuary personal estate, or who, under this proviso, shall become entitled to the premises hereinbefore devised, or the estates hereinafter directed to be purchased as aforesaid, or any of them, shall, within twelve calendar months after he shall become so entitled, unless he shall then be under the age of twenty-one years, and if he shall then be under that age then within twelve months after he shall attain the age of twenty-one years, abandon his own surname and assume and use the surname of —— only, and no other surname whatsoever in addition to his Christian name; and shall bear the arms of ——, either alone or quartered with his family arms; and shall, within the said space of twelve calendar months, apply for an Act of Parliament, or license from the Crown, or take all other proper steps to enable him to take and bear the said surname and arms of ——, as aforesaid. AND I DECLARE that so often as any such person shall neglect to take or use the said surname and arms, and to take such steps as may be requisite to enable him so to do within the said space of twelve calendar months, or shall afterwards discontinue to use and bear such surname and arms, then, if the person so neglecting or discontinuing shall be tenant for life of the premises hereby devised, or of the estates so to be purchased as aforesaid, the premises hereby devised and the estates so to be purchased, or such of them as the case shall require, shall go to the person who would be entitled to the same if such tenant for life were

dead; or if such person so neglecting or discontinuing as aforesaid shall be tenant in tail male under this my will, the estate or estates in tail male of the person so neglecting or discontinuing in the premises hereinbefore devised, and in the estates to be purchased as aforesaid, shall cease; and the estates in which such estate or estates in tail male shall so cease shall go as if such person were dead without issue male, but without prejudice to any jointure, term of years, and remedies for securing the same, and to any lease, sale, or exchange made before any such cesser. AND I DECLARE that, if under either of the provisoes hereinbefore contained there shall be a cesser of the estate of any person hereby made tenant for life or in tail male of the estates hereby devised, or of the estates to be purchased as aforesaid, and in consequence of such cesser there shall be a suspense of the immediate expectant or eventual estate in the same premises, then and so often the premises hereinbefore devised, and the estates to be purchased as aforesaid, wherein there shall be such cesser, shall go TO THE USE of J. K., of &c., and M. N., of &c., their heirs and assigns, during such suspenses as aforesaid, IN TRUST, for twenty-one years from my death, or so much of such period as the then immediate remainder in the same premises shall be in suspense, to accumulate the rents and profits of the same premises, and to apply the same with the accumulations in the manner in which the rents and profits of the premises hereby de-

Provision in case of suspense of vesting of the estates.

vised, and of the estates to be purchased with the residue of my personal estate, are hereby directed to be applied during the minority of any person for the time being entitled to the actual possession of the said premises, or as near thereto as circumstances will permit; AND to pay such of the rents and profits as shall arise after the said period of twenty-one years to the person or persons then entitled to the first vested estate therein expectant on the failure or determination of such vacant or contingent remainder or remainders. AND I DECLARE, that if, during the life of any person hereby made tenant for life, or during the period of twenty-one years from the decease of all such persons, any person for the time being entitled to the possession or the receipt of the rents and profits of the premises hereby devised, and of the estates to be purchased as aforesaid, or otherwise acquired under the trusts hereof, shall be under the age of twenty-one years, the said J. K. and M. N., and the survivor of them, and the executors or administrators of such survivor, (hereinafter called the trustees or trustee), shall, so long as the person so entitled shall be under the age of twenty-one years (but without prejudice to the powers hereinafter contained, and the uses and estates to be created thereby,) receive the rents and profits of the premises hereby devised, and of the estates to be purchased as aforesaid, and apply any part of such rents and profits for his maintenance and education, at the discretion of the said trustees

Trusts during minority

or trustee, or shall pay the same to the guardian or guardians of such minor for the purpose of being so applied. AND I DIRECT, that the residue of the said rents and profits shall, during the last-mentioned period, be invested by and in the names of my said trustees or trustee in the public stocks or funds of Great Britain, or upon Government or real securities in England or Wales, but not in Ireland, so that the same may accumulate in the nature of compound interest, and that, at the end of each such period of accumulation, or sooner if they or he shall think fit, my said trustees or trustee shall call in and convert the said accumulated fund into money, and invest the same in the purchase of freehold or copyhold estates in Great Britain; And shall settle the estates so to be purchased TO THE USES and in the manner to and in which I have hereby settled the premises from the rents and profits of which such accumulation shall have proceeded, or as near thereto as the deaths of parties and other circumstances will admit; AND if any such purchase of real estate be made during the period of accumulation, the rents and profits of the estates so to be purchased shall to the end of the period of accumulation be accumulated in the manner and for the purposes hereinbefore declared respecting the premises hereinbefore devised. AND I DECLARE, that it shall (*Power for tenants for life to charge with jointure and with portions for younger children, pp.* 250, 251). AND I DECLARE, that it shall be lawful for any person who under

Power to jointure and charge with portions.

Power to grant leases for 21 years.

this my will shall be tenant for life in possession of the hereditaments hereby devised, and of the estates hereinafter directed to be purchased with my residuary personal estate, who shall have attained the age of twenty-one years, and for the said J. K. and M. N., and the survivor of them, and the executors and administrators of such survivor, during the minority of any such tenant for life or in tail male, and also during any such suspense or contingency as aforesaid of the then immediate remainder therein, by deed to appoint any of the premises hereby devised, and also any estates to be purchased as last aforesaid, to any person or persons for any term not exceeding (*Power to lease for twenty-one years, p.* 200.)

Power to give license to copyholders to grant leases

AND I DECLARE, that it shall be lawful for any person to whom the preceding power of leasing is reserved or given, to grant to any customary or copyhold tenant of any manor hereby devised or of any manor to be purchased with my residuary personal estate, license to demise, for any term not exceeding twenty-one years in possession, any hereditaments holden by such tenant of any such manor, so that the person or persons granting such lease accept the usual fine for granting such lease, and in all respects conform to the custom of the manor of which such hereditaments shall be holden in relation thereto.

Power of sale and exchange.

AND I DECLARE, that it shall be lawful for the said J. K. and M. N., and the survivor of them, and the executors or administrators of such survivor, (hereinafter called the trustees or trustee),

at the request of the person for the time being entitled under this my will to the actual possession or to the receipt of the rents and profits of any hereditaments hereby devised or to be purchased as hereby directed, if such person shall be of full age, and during the minority of any such person at the request of the guardian or guardians of such person, but if there shall be no such person then at the discretion of the said trustees or trustee, to dispose of, either by way of absolute sale or in exchange for other hereditaments in Great Britain, any of the hereditaments hereby devised and any hereditaments to be purchased with my residuary personal estate, for such price in money or for such equivalent in hereditaments as to the said trustees or trustee shall seem meet, And upon any such exchange to give or receive any money for equality of exchange out of any funds vested in such trustees or trustee under this my will, or to charge any money so to be paid for equality of exchange or for the expenses of such exchange, with interest thereon, upon any hereditaments to be received in exchange; And that, for the purpose of any such sale or exchange, it shall be lawful for the said trustees or trustee (*Power to revoke old uses and to declare new uses. Trusts of purchase money, p. 254*). AND I DEVISE (*Devise of copyholds upon trusts corresponding with the uses of freeholds, p. 282*). AND I BEQUEATH all my leasehold estates, except leaseholds vested in me upon any trust or by way of mortgage, and except my leasehold house in ——

Devise of copyholds upon trusts corresponding with uses of freeholds.

Bequest of leaseholds upon trusts corresponding with uses of freeholds.

hereinafter bequeathed unto the said J. K. and M. N., their executors and administrators, (*Trusts of leaseholds corresponding with the uses of freeholds, p.* 283). I BEQUEATH my leasehold house in ——, with the stables, coach-houses, and appurtenances, to the said C. D., his executors and administrators. I BEQUEATH all plate, pictures, engravings, drawings, statues, busts, medals, cameos, jewels and works of art, books and manuscripts, which at my death shall be in my house at ——, including any articles removed therefrom for repair or for any temporary purpose, unto the said J. K. and M. N., their executors and administrators, UPON TRUST for the person or persons for the time being entitled to the hereditaments hereby devised, and to be enjoyed in the nature of heirlooms, but so that the same shall not vest absolutely in any person hereby made tenant in tail male who shall not attain the age of twenty-one years. I BEQUEATH unto the said C. D. all the household goods and furniture, china, glass, linen, wines, liquors, and effects (except those hereinbefore specifically bequeathed), in my said house at ——, including any article removed therefrom for repair or for any temporary purpose. AND I BEQUEATH all my personal estate not hereinbefore bequeathed unto the said J. K. and M. N., their executors and administrators, UPON TRUST that my said trustees or trustee shall as soon as convenient sell, call in, and convert into money, such of my said residuary personal estate as shall not consist of money, and shall out of

Bequest of leasehold house.

Bequest of plate, &c., as heirlooms.

Bequest of household furniture.

Bequest of personalty, in trust to invest in the purchase of real estate.

the money to arise from such sale, calling in, and conversion into money, and out of the money of which I shall die possessed, pay my debts, funeral and testamentary expenses, and legacies; And shall within —— years from my death invest the residue of such monies in the purchase of estates in fee simple in England or Wales, or of copyhold or leasehold hereditaments convenient to be held therewith, and shall settle or cause to be settled the estates so to be purchased TO THE USES, upon the trusts, with, under, and subject to the powers, provisoes, and declarations herein declared concerning my estates hereinbefore devised, or as near thereto as the nature of the premises and intervening circumstances will admit, but not so as to increase or multiply charges. AND I DECLARE, that, until my said residuary personal estate shall be invested in the purchase of real estate as hereinbefore is directed, my said trustees or trustee shall invest my said residuary personal estate in the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England, Wales, or Ireland, and shall alter, vary, and transpose the same stocks, funds, and securities at discretion; And shall pay the dividends, interest, and annual income of the said trust-monies, stocks, funds, and securities to such person or persons and in such manner as the rents and profits of the estates to be purchased with my said residuary personal estate would be payable if such purchases and settle-

And until a purchase to invest said residuary personal estate.

ments as aforesaid were then actually made. AND I DECLARE, that it shall be lawful for the said trustees or trustee, before investing all my residuary personal estate in the purchase of real estates, to set apart such part thereof as they or he shall think fit, by investing the same in any of the parliamentary or public stocks or funds of Great Britain, for satisfying with the dividends thereof the life annuities given by any codicil thereto; And after such annuities shall cease, and all arrears thereof shall be paid, then every such investment shall revert to and form part of my residuary personal estate. AND I APPOINT the said A. B. and C. D. executors of this my will; And (*Power for executors to arrange and compromise, p.* 195). AND I DEVISE all (*Devise of mortgage estates, p.* 194). AND I DECLARE that (*Trustees' receipt clause: Power to appoint new trustees, pp.* 195, 196, 197). IN WITNESS &c.

Power to set apart part of the residuary personal estate to answer annuities.

Appointment of executors.

Devise of mortgage estates.

Trustee clauses.

No. XXXIX.

CODICIL *bequeathing three Sums of Money to Trustees, upon Trust to invest the same, and to pay the Produce thereof respectively to three different Persons for their respective Lives.—With Remainder as to one Sum to the Granddaughters of the Tenant for Life of such Sum,—As to one other Sum for the Children of the Tenant for Life of such Sum,—In Default of such Children, upon the Trusts declared of the third Sum,—And as to the third Sum, Upon Trust for the Children of the Tenant for Life of such Sum.—Trustee Clauses.*

Bequest of sum of money to trustees upon trust to invest and pay the produce to G. H. for life.

I, A. B., of &c., DO DECLARE THIS TO BE A CODICIL TO MY WILL, dated the —— day of ——. I BEQUEATH to C. D., of &c., and E. F., of &c., their executors and administrators, the sum of £——, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor (hereinafter called the trustees or trustee), do and shall forthwith invest the same sum in some of the Parliamentary stocks or public funds of Great Britain, or upon Government or real security in England or Wales, but

not in Ireland, to be from time to time altered as they or he shall think proper, and upon trust to pay the interest, dividends, or annual produce thereof during the life of my sister G. H., of &c., to the said G. H.; And after the death of the said G. H., or in her lifetime if she shall so direct, UPON TRUST to pay or transfer the said sum of £——, or the stocks, funds, and securities upon which the same shall be invested, unto all or such one or more exclusively of the other or others of the granddaughters of the said G. H. (to be born before such appointment shall be made to her or them respectively) in such manner, in such proportions, and subject to such conditions, restrictions, and limitations over, for the benefit of any other or others of the said granddaughters, and with such provisions for maintenance, education, and advancement, and to be paid at such time as the said G. H. shall by deed or will appoint;

And after her death, or in her lifetime if she so direct, to hold the same in trust for the grand daughters of G. H. as she shall appoint

And in default of such appointment and so far as no such appointment shall extend, IN TRUST for all the granddaughters or any of the granddaughters of the said G. H. who shall attain the age of twenty-one years or marry, equally to be divided between them if more than one. AND IF there shall be no granddaughter of the said G. H. who shall attain the age of twenty-one years or marry, then I DIRECT, that the said sum of £——, or so much thereof as shall not have become vested or been applied under any of the trusts or powers of this codicil, shall sink into and become part of my residuary personal estate.

And in default of appointment, in trust for such granddaughters equally.

I BEQUEATH to the said C. D. and E. F. the sum of £——, UPON TRUST that the said trustees or trustee shall invest the same in their or his names or name in some of the Parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England, Wales, or Ireland, to be from time to time altered, varied, or transposed as they or he shall think proper. AND I DIRECT that the said trustees or trustee shall pay the interest, dividends, and annual produce thereof to my nephew F. C. for his life; And after the death of the said F. C. shall hold the said trust monies, stocks, funds, and securities in trust for all the children or any the child of the said F. C. who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, equally to be divided between them if more than one; And if there shall be no child of the said F. C., who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then in trust to pay the interest, dividends, and annual produce of the same trust monies, stocks, funds, and securities, to my cousin F. A. C. for his life. And as to the said trust monies, stocks, funds, and securities from and after the death of the said F. A. C., I DECLARE, that the same shall be held upon and for such trusts, intents, and purposes, and in the same manner for the benefit of the children or child of the said F. A. C., as I have hereinbefore expressed with regard to the children or child

Bequest of a sum of money to trustees upon trust to invest,

—and pay the produce to F. C. for life,

—and after his death to hold the same in trust for the children of F. C. in equal shares.

—and in default of such children, in trust for F. A. C. for life,

—and after his death for his children in equal shares.

of the said F. C. And if there shall be no child of the said F. A. C. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then I DIRECT that such stocks, funds, and securities shall fall into and become part of my residuary personal estate.

Bequest of a sum of money to trustees upon trust to invest.

AND I BEQUEATH the further sum of £—— to the said trustees upon trust to invest the same in their names in or upon such stocks, funds, or securities, and with the like power to alter or vary the same, as I have hereinbefore directed and given with respect to the sum of £—— first hereinbefore given to them, and the stocks, funds, and securities directed to be purchased or acquired therewith.

—and hold the same in trust for F. A. C. for life, and after his death for his children.

AND I DIRECT that the said trustees or trustee shall hold the said sum of £—— lastly hereby bequeathed, and the stocks, funds, and securities to be purchased or acquired therewith, upon and for such and the same trusts, intents, and purposes, and in such manner for the benefit of the said F. A. C. for his life, and after his decease for his children or an only child, as I have hereinbefore expressed (but in remainder expectant on the decease of the said F. C. and such failure of his issue as aforesaid) concerning the sum of £—— secondly hereinbefore bequeathed, and the stocks, funds, and securities to be purchased or acquired therewith.

Trustees' receipt clause.

AND I DECLARE, that the receipt or receipts of the said C. D. and E. F., or of the survivor of them, or of the executors or administrators of such survivor, or of the trustees or trustee for the time

being of this codicil, for any money paid to them or him under this codicil or under any of the trusts, shall effectually discharge the person paying or transferring the same therefrom, or from being bound to see to the application, or from being answerable for the loss, misapplication, or nonapplication of the money in any such receipt acknowledged to be received. AND I DIRECT (*Trustee Clauses*). And in all other respects I ratify and confirm my said will. IN WITNESS &c.

Trustee clauses.

No. XL.

WILL *bequeathing Legacies, and bequeathing Residue of Testator's Personal Estate to his Wife absolutely, with a Recommendation as to the Disposal thereof; but so as not to create a Trust.*

Bequest of legacies

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I BEQUEATH to my friend and medical attendant, C. D., of &c., the sum of £——. I BEQUEATH to my housekeeper, E. F., in my service at my death, the sum of £——. I BEQUEATH to each of my servants, other than the said E. F., who shall have been in my service for one year at my death, one year's wages in addition to what may be due to them at my death. And I direct that all the said legacies hereby given shall be paid free from legacy duty. AND I BEQUEATH all the residue of my personal estate to my dear wife G. H., her executors and administrators. AND I RECOMMEND my said wife to leave my said residuary personal property, or such part thereof as she shall not dispose of in her lifetime, unto my brothers J. K. and M. N., and their families, in such proportions as my said wife shall think fit. AND I HEREBY DECLARE

Bequest of residue.

that the recommendation hereinbefore contained shall not be construed or extend to create any trust of any of my said residuary personal property, or to render any disposition of my said residuary personal property obligatory on my said wife. AND I APPOINT my said wife executrix of this my will. IN WITNESS &c. (*a*).

(*a*) The remarks in the Introduction on the effect of words of recommendation in a will shew the inexpediency of inserting any request or recommendation not intended as an absolute trust. If, however, the testator persist in expressing such request, it should always be followed by a declaration, as in the text, distinctly negativing the creation of a trust. The recommendation in the will being only to leave such part of the testator's personal property as his widow should not dispose of in her lifetime, such recommendation would not create a trust, but the distinct declaration that no trust is intended precludes any question.

No. XLI.

WILL of Real Estate.—Devise of Real Estate in strict Settlement, with Powers of Jointuring, and Charging Portions, and Powers of Sale and Exchange.—Appointment of Protectors of Estates Tail.—Bequests of Leaseholds and Devise of Copyholds upon Trusts corresponding with Uses of Freeholds.—Appointment of Executors.—Trustee Clauses.

I, A. B., of &c , DO DECLARE THIS TO BE MY LAST WILL. I DEVISE all my real estates except what I otherwise devise, and except estates vested in me as a trustee or mortgagee, TO THE USE of C. D., of &c., for his life, without impeachment of waste; with remainder TO THE USE of the first and every other son of the said C. D., successively, according to seniority, in tail male; with remainder TO THE USE of all and every the daughters of the said C. D., successively, according to seniority, in tail male; with remainder TO THE USE of the first and every other son of the said C. D., successively, according to seniority, in tail; with remainder TO THE USE of the first and every other daughter of

Devise to C. D. for life; remainder to his first and other sons in tail male.

To his first and other daughters in tail male.

To his first and other sons in tail.

To his first and other

the said C. D. in tail; with remainder To THE USE of X. Y., of &c., and his heirs. AND I DECLARE that if any person whom I have hereby made tenant in tail male or tenant in tail of the real estates hereby devised, is now born, or shall be born before my death, or in due time after, the estate in tail male or in tail given to such person shall cease; and in lieu thereof I devise the hereditaments hereinbefore limited for such estate or estates in tail male or in tail to the person whose estate in tail male or in tail shall so determine, for his or her life, without impeachment of waste; with remainder To THE USE of his or her first and other sons successively, according to seniority, in tail; with remainder To THE USE of his or her first and other daughters successively, according to seniority, in tail. AND I DECLARE, that, during the minority of any person hereby made tenant for life or tenant in tail male, or in tail by purchase, who shall for the time being be entitled to the possession or to the receipt of the rents and profits of the premises hereby devised, E. F., of &c., G. H., of &c., and J. K., of &c., or the survivors or survivor of them, and the executors or administrators of such survivor (hereinafter called the trustees or trustee), shall enter into the possession or the receipt of the rents and profits of the same premises, and shall, so long as such tenant for life or tenant in tail male, or in tail by purchase, shall be under the age of twenty-one years, receive the

daughters in tail.

To X. Y. in fee.

Persons born in testator's lifetime to take only life estates.

Trusts during minority.

rents and profits of the same premises, and manage the same premises, with power to cut timber or underwood in the usual course, and to erect, pull down, or repair buildings, and drain or improve the said premises, and to insure against fire, and to make allowances to tenants, and to accept surrenders of leases and tenancies, and generally to deal with the premises as if they or he were owners thereof; AND SHALL, during such minority, out of such rents and profits, and out of the produce of any sale of timber or underwood, pay all expenses of management, and all outgoings in respect of the premises, and the interest on any principal money secured on the same premises; And pay any money they or he shall think fit for the maintenance, education, or advancement of such minor; and may either themselves or himself pay such money, or may pay the same to any guardian of such child for the purposes aforesaid, without seeing to the application thereof; And shall accumulate the residue of the same rents and profits by investing the same, and the resulting income thereof, upon any of the Parliamentary stocks or public funds of Great Britain; or at interest upon Government or real securities in England, Wales, or Ireland; and shall hold the same UPON TRUST, if the person during whose minority the same shall have been accumulated shall attain the age of twenty-one years, IN TRUST for such person as his or her personal estate; but, if such person shall die under the

age of twenty-one years, then upon the trusts, and under and subject to the powers, provisoes, and declarations hereinafter declared of the monies to arise from a sale in pursuance of the power of sale hereinafter contained, and the stocks, funds, and securities upon which such monies are hereinafter directed to be invested. AND I DECLARE that it shall be lawful for (*Power to jointure, and charge with portions for younger children, pp. 250, 251*). AND I DECLARE that it shall be lawful for any person who, under this my will, shall be tenant for life in possession of the hereditaments hereby devised, and for the said trustees or trustee during the minority of any such tenant for life, or of any tenant in tail male, or in tail by purchase entitled in possession under this my will, TO APPOINT by deed any of the premises hereby devised to any person or persons for any term not exceeding twenty-one years. (*Powers of leasing, p. 254.*) AND I DECLARE that it shall be lawful for the said trustees or trustee, during the life of any person hereby made tenant for life, who shall under this my will be entitled to the possession, or to the receipt of the rents and profits of the premises hereinbefore devised, with his or her consent in writing if of full age, And during the minority of any person hereby made tenant for life, or tenant in tail male, or in tail by purchase, who, if of full age, would be entitled to the possession, or to the receipt of the rents and profits of the same premises, at the discretion of the same trustees or

Power of jointuring and charging portions.

Power to grant leases.

Power of sale and exchange.

trustee, to (*Powers of sale and exchange, p. 254*).

Appointment of protectors of the settlement.

AND I NOMINATE AND APPOINT the said E. F., G. H., and J. K. to be protectors of the several estates in tail male or in tail hereby created, during the continuance of the estate or estates for life for the time being preceding any such estate in tail male or in tail, with all such discretionary powers, authorities, and privileges as are by the "Act for the abolition of fines and recoveries, and the substitution of more simple modes of assurance" annexed to the office of protection of the settlement.

Power of appointing new protectors.

AND I DECLARE, that, if any protector hereby appointed, or any protector to be appointed as hereinafter mentioned, shall die, or shall by deed relinquish the office of protector, then, and in every such case, it shall be lawful for the surviving or continuing protectors or protector for the time being (and for this purpose a protector or protectors relinquishing the office of protector shall, if willing to act in the execution of this power, be considered a continuing protector or continuing protectors), or the acting executors or administrators of the last surviving or continuing protector, by deed (to be duly enrolled in Chancery), to appoint one or more person or persons (not being tenant for life of the premises hereby devised) to be protector or protectors of the settlement in the place of the person or persons who shall die, or shall by deed relinquish his or their office of protector; And that every such new protector so to be appointed may, either alone or jointly

with the surviving or continuing protector or protectors as the case may be, have the same powers, authorities, and discretion as if he had been hereby originally appointed a protector (*a*). AND

(*a*) In appointing protectors of a settlement, and in providing for the appointment of new protectors, the effect of the 32nd section of the Act 3 & 4 Will. 4, c. 74, which authorises the appointment of protectors, must be borne in mind. It must be remembered that the first appointment of a protector or protectors must be made by the settlor, by the settlement by which the land shall be entailed; that the persons so appointed must be in esse, not exceeding three in number, and must not be aliens. The power of appointing new protectors authorised by Act of 3 & 4 Will. 4, c. 74, only extends to the cases of the death of a protector or the relinquishment by deed of the office of protector; the appointment of a new protector under this power is by the Act required to be by deed, and the selection of such new protector must be left to the discretion of the donee of the power of new appointment. Every deed by which a protector is appointed under a power in a settlement, and every deed by which a protector relinquishes his office, is required to be enrolled in Chancery. The object in appointing a protector of the settlement instead of permitting the person to become protector who would, under the provisions of the Act 3 & 4 Will. 4, c. 74, have been such protector, if no protector had been appointed by the settlement, is generally the maintenance of the settlement for the longest possible period. The natural presumption being that a protector appointed solely for the preservation of an entail will be less likely to concur in the destruction of such entail than a tenant for life, it will be in many cases desirable to provide that such tenant for life shall not be appointed to fill any vacancy in the office of

Devise of copyholds.

I DEVISE all my copyhold and customary estates (*Devise of copyholds to trustees upon trusts cor-*

protector. Though it may be a question, whether an appointment of a tenant for life as protector under a power of appointing new protectors, expressly forbidding the appointment of such tenant for life, would not be held to be a good appointment, the Act authorising the appointment of any "person or persons whom the donee of the power shall think proper;" yet it is conceived that there is little risk of such appointment being made in opposition to a distinct declaration of the testator's wish. It should also be remembered, that, if the person who would have been sole protector, if no protector were appointed, be appointed one of the joint protectors, such person "shall, unless otherwise directed by the settlor, act as sole protector, if the other persons constituting the protectors shall have ceased to be so by death or relinquishment of the office by deed, and no other person shall have been appointed in their place." In appointing a protector of a settlement it should be remembered that the power of such protector as to giving or refusing his consent is absolute, and cannot be controlled or affected either by any wish or declaration of the settlor, or by any other means; and that any agreement entered into by the protector of a settlement to withold his consent is void; and that a Court of Equity cannot control or interfere to restrain the exercise of his power of consent, or treat his consent as a breach of trust. Any recommendations by the settlor as to giving or withholding consent, or as to the mode or conditions of giving any consent, would be entirely nugatory. The 37th section of the Act 3 & 4 Will. 4, c. 74, should be borne in mind in selecting a person to fill the office of protector. By that section it is enacted, "That the rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the

responding with the uses of the freeholds, p. 283). AND I BEQUEATH all my leasehold estates (*Bequest of leaseholds to trustees upon trusts corresponding with the uses of freeholds, p. 283*). AND I APPOINT (*Appointment of executors with power to compromise, p. 194*). AND I DECLARE that (*Trustees' receipt clause; Power for the appointment of new trustees, pp. 195, 196*). IN WITNESS, &c.

Bequest of leaseholds.

Appointment of executors.

Trustee clauses.

same may be exercised shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act." From the great powers given to the protector, and the impunity with which he may misuse these, either from obstinacy or evil motives, he having, in the words of Sir *L. Shadwell*, V. C., "the statutory privilege of being uncontrollably perverse and corrupt," greater care should if possible be taken in the selection of persons to fill the office of protector than of ordinary trustees, whose conduct is always liable to the censure and control of the Court of Chancery.

No. XLII.

WILL *of* REAL *and* PERSONAL PROPERTY. *—Bequest of Legacies and Annuities.—General Devise and Bequest of Real and Personal Property in Trust for Sale and Conversion into Money to be applied in Payment of Debts and Legacies.—Provision as to Payment of Annuities.—Trusts of Residue as to one Moiety to Testator's Grandson or his Wife and Children if he shall die in Testator's Lifetime leaving a Wife and Children.—Trusts as to the other Moiety for Testator's Granddaughter and her Husband and Children.—Trusts for Advancement, Maintenance, and Accumulation.—Power of Leasing.—Power to permit Funds to remain in their actual State of Investment.—Appointment of Executors.—(Usual Clauses).*

Bequest of legacies and annuities.

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I BEQUEATH to my housekeeper C. D., if she shall be in my service at my death, the sum of £——. I BEQUEATH to my butler E. F., if he shall be in my service at my death, the sum of £——. I BEQUEATH to each of my other servants who shall have been in my service for one

year at my death, one year's wages in addition to any wages due at my death. I BEQUEATH to G. H., of &c., an annuity of £—— for his life. I BEQUEATH to J. K., of &c., an annuity of £—— for his life. I DEVISE AND BEQUEATH all my real and personal estate whatsoever, except estates vested in me upon trust or by way of mortgage, unto M. N., of &c., and O. P., of &c., their heirs, executors, and administrators, according to the nature thereof, UPON TRUST that the said M. N. and O. P., or the survivor of them, or the heirs, executors, or administrators of such survivor (hereinafter called the trustees or trustee), shall with all convenient speed sell my said real estate either by public auction or private contract, with such stipulations as to title or evidence of title as the said trustees or trustee shall think fit, and with power to buy in the same premises or any part thereof at any sale by auction, and to rescind, alter, or vary any contract for sale, and to resell without being answerable for any loss to be occasioned thereby; And shall sell, call in, and convert into money such part of my personal estate as shall not consist of ready money; And shall stand possessed of the monies to arise from such sale, calling in, and conversion into money, and of the ready money of which I shall die possessed, UPON TRUST that the said trustees or trustee shall out of the same pay my debts, funeral and testamentary expenses, and legacies, and the costs incurred in or about such sale, calling in, or conversion into money; And shall at the discretion

Devise and bequest of real and personal estate to trustees, upon trust to sell, call in, and convert into money.

—and pay funeral and testamentary expenses, debts, and legacies.

Provision

for annuities.

of the said trustees or trustee either purchase for the said G. H. and J. K. annuities of the said amounts of £—— and £——, in any insurance office in London or Westminster, or set apart such a sum of £3 per cent. Bank Annuities as shall be sufficient by the dividends thereof to pay the said annuities or such of them as shall be payable and shall not have been provided for by the purchase of an annuity as aforesaid, and shall apply the dividends on the same Bank Annuities accordingly; And shall stand possessed of all the residue of the said trust monies, as to one moiety thereof, UPON TRUST for my my grandson R. S., of &c.; And if the said R. S. shall die in my lifetime, then I DIRECT that the said trustees or trustee shall lay out the same moiety in their or his names or name upon any of the Parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England, Wales, or Ireland, or in the debentures, loan notes, or other securities of any railway company in Great Britain or Ireland incorporated by Act of Parliament and paying a dividend (or in the purchase of any preference or guaranteed stock or shares of any such railway company), with power to alter, vary, or transpose the same into or for other stocks, funds, or securities of the same or a like nature at the discretion of the said trustees or trustee, and shall pay the dividends, interest, and annual produce thereof unto T. U., the wife of the said R. S., for her life; And after the death of the said T. U. shall

Trust of residue as to one moiety for testator's grandson, R. S., and if he die in testator's lifetime for widow and children of R. S.

hold the same stocks, funds, and securities in trust for all the children or any the child of the said R. S., whether by the said T. U. or any aftertaken wife, who being sons or a son shall attain twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one in equal shares. AND I DIRECT that the said trustees or trustee shall lay out the other moiety of the said residue of the said trust monies in their or his names or name upon any such stocks, funds, and securities as are hereinbefore mentioned with respect to the said first-mentioned moiety of the said residue, with such power to alter, vary, and transpose the stocks, funds, and securities upon which the same shall be invested as is hereinbefore declared of the stocks, funds, and securities upon which the said first-mentioned moiety shall be invested; And shall pay the dividends, interest, and annual produce thereof to my granddaughter X. Y., of &c., for her life for her separate use, but so that she shall not have power to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise, in the way of anticipation; And after the death of the said X. Y., shall pay the same dividends, interest, and annual produce to Y. Z., of &c., the present husband of the said X. Y. for his life; And after the death of the said Y. Z. shall hold the said last-mentioned trust monies, stocks, funds, and securities in trust for all the children or any the child of the said X. Y., by her present or

Trusts of other moiety of residue to invest the same, and pay the annual produce to testator's granddaughter, X. Y. for her life for her separate use, and after her death for her husband and children.

any aftertaken husband (*a*), who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one in equal shares.

Trusts in default of children of R. S. becoming entitled, as to first-mentioned moiety upon the trusts declared of second moiety.

AND I DECLARE, that in case my said grandson R. S. shall die in my lifetime, and there shall be no child of the said R. S. who shall become entitled to a vested interest in the moiety the trusts whereof are firstly hereinbefore declared, then, subject and without prejudice to the life interest hereinbefore given to the said T. U. therein, the said trustees or trustee shall hold the said first-mentioned moiety, or so much thereof as shall not have become vested or been applied under any of the trusts or powers herein contained, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations herein declared and contained of the said moiety the trusts whereof were secondly hereinbefore declared, or such of the same as shall be then subsisting and capable of taking effect;

Trusts in default of children of X. Y becoming

And in case there shall be no child of the said X. Y. who shall become entitled to a vested interest in the moiety the trusts whereof are se-

(*a*) The gift to the children of any person will of course include the children of such person by any after-taken husband or wife: but when, as in the text, life interests are given to the parent, and to the husband or wife of the parent, it is well to specify distinctly that the children by another marriage are intended to be included.

condly hereinbefore declared, then, subject and without prejudice to the life interest hereinbefore given to the said X. Y. and Y. Z. therein, the said trustees or trustee shall hold the said moiety the trusts whereof were secondly hereinbefore declared, or so much thereof as shall not have become vested or been applied under any of the trusts or powers herein contained, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations herein declared and contained of the said moiety the trusts whereof were firstly hereinbefore declared, or such of the same as shall be then subsisting and capable of taking effect.

coming entitled, as to second moiety upon the like trusts as were declared of the first moiety.

AND I DECLARE, that in case the said R. S. shall die in my lifetime, and there shall be no child of the said R. S. or of the said X. Y. who shall become entitled to a vested interest under this my will, that the said trustees or trustee shall hold all the said residue, or so much thereof as shall not have become vested or been applied under any of the trusts or powers herein contained, subject and without prejudice to the life interests hereinbefore given to the said X. Y. and Y. Z. in trust for D. E. F., of &c., his executors and administrators.

Ultimate trusts of both moieties for D. E. F.

AND I DECLARE, that the said trustees or trustee may after the deaths of the respective parents of any child of the said R. S. or of the said X. Y. or previously thereto if the parents or parent of such child shall so direct in writing, raise any part or parts of the then expectant or presumptive or vested share of any child under the trusts

Advancement clause.

hereinbefore declared, not exceeding in the whole for any such child one half part of his or her then expectant or presumptive or vested share or fortune, and apply the same for his or her advancement or benefit. AND I DECLARE, that the said trustees or trustee shall, after the death of every person to whom a life interest is hereby given in priority to the estate hereby given to any child of the said R. S. and X. Y., apply the whole or such part as they or he shall think fit of the annual income of the share or fortune to which any such child shall for the time being be entitled in expectancy under the trusts hereinbefore declared for or towards the maintenance or education of such child, either directly or to his or her guardians or guardian, without seeing to the application thereof or requiring any account of the same;

Maintenance and education clause.

AND SHALL during such suspense (*Accumulation clause, p. 397*). AND I DIRECT, that, until my real estate hereinbefore devised shall be sold, it shall be lawful for the said trustees or trustee at their or his discretion to demise all or any part of my real estate so remaining unsold for any term of years absolute not exceeding twenty-one years, to take effect in possession, so as there be reserved on every such demise the best yearly rent or rents to be incident to the immediate reversion that can be reasonably gotten without taking any fine, premium, or foregift, or anything in the nature thereof, and so as there be reserved on every such demise a condition of re-entry for nonpayment within a reasonable time to be

Accumulation clause

Power for leasing for 21 years.

therein specified of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof and be not made dispunishable for waste. AND THAT in the meantime until the said premises hereinbefore devised in trust for sale shall have been sold, the said trustees or trustee shall apply the rents and profits of the same (*Rents and profits until a sale to go as the income of purchase money, p. 233*). AND I DEVISE (*Devise of mortgage estates, p. 194*). AND I DECLARE, that it shall be lawful for the said trustees or trustee at their or his absolute and uncontrolled discretion to allow any part of my personal estate to remain in its present state of investment or in the state of investment in which it shall be at my death without being liable for any loss which may be occasioned thereby (*b*). AND I APPOINT the said M. N. and O. P. executors of this my will (*Power for the executors to arrange and compromise; Declaration that the receipt of trustees shall be discharges, p. 195*). AND I DECLARE, that (*Power to appoint new trustees, p. 269; Trustees' indemnity clause, p. 197*). IN WITNESS &c.

Rents and profits until a sale to go as income of purchase money

Devise of mortgage.

Power to permit estate to remain in its actual state of investment

Appointment of executors.

Power to appoint new trustees.

(*b*) This power should never be omitted if any considerable part of the testator's estate consist of property subject to great fluctuations in value.

No. XLIII.

WILL *of* REAL *and* PERSONAL ESTATE.—*Devise of Real Estates in —— to Trustees upon Trust for Testator's Wife, for her Life, or until she Assign or Incumber; with Remainder in Trust for Testator's First and other Sons in Tail; with Remainder in Trust for Testator's Daughters, as Tenants in Common in Tail, with Cross Remainders.—Power for Trustees to manage during Minority.—Powers of Leasing, of granting Mining Leases for Sixty Years, and Building Leases for Ninety-nine Years or Three Lives.—Power to convey for Building Purposes in Consideration of a Fee Farm Rent.—Power to accept Surrender of Leases and to grant new Leases.—Power to enfranchise Copyholds.—Power to grant Licenses to Copyholders to demise.—Power of Sale and Exchange.—Bequest of Leaseholds upon Trusts corresponding with Uses of Freeholds.—Devise of Residue of Real Estate and Bequest of Personalty upon Trust to sell and convert into Money, and*

pay Debts and Legacies, and Debts charged on Estates in ——, and hold the Residue upon Trusts of Money to arise from a Sale of Lands in ——. — Appointment of Executors.—Trustee Clauses.

THIS IS THE LAST WILL of me, A. B., of &c. I DEVISE all my real estate in the county of——, except what I otherwise devise by this will or any codicil hereto, and except estates vested in me upon trust or by way of mortgage, to the use of C. D., of &c., and E. F., of &c., their heirs, executors, and administrators respectively, according to the nature and tenure thereof, IN TRUST to permit my wife G. H. to have the use and enjoyment of my mansion-house at ——, and the pleasure grounds and gardens thereof for her life; And to pay the rents and profits of all other my real estate in the said county of —— to my said wife for her life, or until she shall do or suffer some act whereby the same rents and profits or some part thereof might, if the same belonged absolutely to her, be charged, disposed of by way of anticipation, or cease to be receivable by my said wife for her own use, she my said wife keeping my said mansion-house, gardens, and pleasure grounds at —— in good order; AND after the determination of the interest of my said wife in the said premises respectively, IN TRUST for my first and other sons successively according to seniority in tail; and for default of such issue, IN TRUST for all my

Devise of real estate in —— to trustees

In trust for testator's wife for life, or until she assigns or incumbers.

With remainder in trust for testator's first and

other sons in tail; with remainder in trust for testator's daughters, as tenants in common in tail, with cross remainders.

daughters or any my daughter, as tenants in common in tail, with cross remainders between or among my said daughters in tail. AND I DECLARE, that if any person who would, if this declaration had not been inserted, be entitled to the possession or the receipt of the rents and profits of the premises hereinbefore devised or any part thereof as tenant in tail by purchase, shall be under the age of twenty-one years, then and so often the said C. D. and E. F., and the survivor of them and the executors or administrators of such survivor shall (*Trusts for management during minority, p.* 280). AND I DECLARE, that it shall be lawful for the said C. D. and E. F., and the survivor of them, and the heirs of such survivor, with the consent in writing of my said wife during the continuance of her interest in the same premises, and after the determination of such interest with the consent of the guardian of any person or persons for the time being entitled as tenant in tail in possession by purchase, to demise all or any part of the premises hereinbefore devised, except my mansion-house at ——, and the gardens and pleasure grounds thereof (*Power of leasing for twenty-one years, p.* 200). AND I DECLARE, that it shall be lawful for the said C. D. and E. F., and the survivor of them, and the heirs of such survivor, with such consent as aforesaid, to demise any part of the mines, quarries, minerals, and substances, in, under, or upon any of the premises hereinbefore devised, except my said mansion-

Power to manage during minority.

Power of leasing.

Power to grant mining leases.

house at ——, and the gardens and pleasure grounds thereof (*Power to grant mining leases, p. 325*). AND I DECLARE, that it shall be lawful for the said C. D. and E. F. and the survivor of them, and the heirs of such survivor, with consent as aforesaid, to demise or agree to demise and afterwards to demise accordingly any of the premises hereinbefore devised, except my said mansion-house at ——, and the gardens and pleasure grounds thereof, to any person or persons who shall or may improve the same by erecting thereon any new buildings, or by rebuilding, repairing, or improving any buildings which now stand or may hereafter stand on the same premises, or by laying out any part of the premises so to be demised as a garden or gardens, for any messuage or messuages built or to be built on the same premises, or as a way, street, or passage, for the use of the lessee or other the occupiers of the same premises, or by expending such sum or sums of money in the improvement of any such buildings, gardens, ways, streets, or passages, as shall be thought adequate for the interests therein respectively to be parted with, or shall covenant so to do within three years from the date of such lease, for any term of years absolute not exceeding ninety-nine years, or for one, two, or three life or lives, or for any term of years determinable upon any life or lives, and renewable or without being renewable upon the dropping of any life or lives, so as there be reserved on every such lease the

Power to grant building leases for years or for lives renewable.

best yearly rent or rents to be incident to the immediate reversion of the hereditaments so to be demised that can reasonably be gotten for the same without taking anything in the nature of a fine, premium, or foregift for the making thereof; And also so that there be reserved such sum of money to be paid upon every such renewal as shall be agreed upon at the making of such lease, and so as there be contained in every such lease a condition of re-entry for non-payment, within a reasonable time to be thereby specified, of the rent or rents thereby reserved, and so as the lessee or lessees do execute counterparts thereof, and do thereby covenant for the rent or rents thereby reserved.

Peppercorn rent may be renewed for the first five years.

AND I DECLARE, that a peppercorn rent or any rent smaller than the rent to be ultimately reserved may be reserved during any of the first five years of any term to be granted as last aforesaid.

Person entitled to rents to take the fines on renewals.

AND I DECLARE, that the person or persons for the time being entitled to the rents and profits of the hereditaments comprised in any such renewable lease as aforesaid, shall upon every such renewal receive the fines or sums of money payable on such renewal for his, her, or their own use.

Power to grant in fee for building, subject to a fee farm rent.

AND I DECLARE, that it shall be lawful for the said C. D. and E. F. and the survivor of them, and the heirs of such survivor, with such consent as aforesaid, to convey any of the premises hereinbefore devised except as aforesaid to the use of any person or persons in fee simple, or to such uses as any person or persons shall appoint, who shall or may improve or covenant to improve

the same by erecting thereon any new buildings, or by rebuilding, repairing or improving any building which now stands or may hereafter stand on the same premises, or by laying out any part of the same premises so to be conveyed as a garden or gardens for any messuage or messuages built or to be built on the same premises, or as a way, street, or passage for the use of the lessee or other the occupiers of the same premises, or by expending such sum or sums of money as shall be agreed upon in the improvement of any such building, garden, ways, streets, or passages, in consideration of a fee farm rent to be reserved and made payable out of the hereditaments so to be conveyed, such fee farm rent to be reserved and limited to the uses and upon the trusts hereinbefore declared of the hereditaments in consideration of the conveyance of which such fee farm shall be granted, or such of the same as shall be then subsisting undetermined and capable of taking effect; and such hereditaments so to be conveyed to be conveyed to the use that such fee farm rent shall be paid thereout, and to the use that the said person or persons to be entitled to the said fee farm rent may have powers of distress and entry upon the hereditaments so to be conveyed for recovering and compelling payment of the said fee farm rent when in arrear. AND I DECLARE that it shall be lawful for the said C. D. and E. F. and the survivor of them, and the heirs of such survivor, with such consent as aforesaid, to accept

Power to accept surrenders of leases for lives, and to grant new leases, or

to convey in consideration of a fee-farm rent.

any surrender of any lease now granted or hereafter to be granted for a life or lives, or for a term of years determinable on a life or lives, of any of the hereditaments hereinbefore devised; And to demise or convey the hereditaments so to be surrendered to the person or persons making such surrender, or as he or they shall direct, in such manner and for such estate or interest as is hereinbefore authorised with respect to any demise or conveyance to be made under any of the powers hereinafter contained, reserving the best rent or limiting the best fee farm rent as the case may be that can be reasonably gotten upon such demise or conveyance as last aforesaid, due regard being had in the reservation of such rent or fee farm rent as the case may be to the value of the lease so to be surrendered, and also to the benefit to be derived by the person to whom such new lease or such conveyance as last aforesaid shall be made, from the change of tenure so to be effected. AND I DECLARE that it shall be lawful for the said C. D. and E. F., and the survivor of them, and the heirs of such survivor, with such consent as aforesaid, to enfranchise (*Power to enfranchise copyholds, p.* 326). AND I DECLARE that it shall be lawful for the said C. D. and E. F., and the survivor of them and the heirs of such survivor, with such consent as aforesaid to (*Power to grant licenses to copyholders to demise &c., p.* 327). AND I DECLARE, that it shall be lawful for the said C. D. and E. F., and

Power to enfranchise copyholds.

Power to grant licenses to copyholders to demise.

Power of sale and exchange.

the survivor of them, and the heirs of such survivor, with such consent as aforesaid, to dispose of and convey, either by way of sale or in exchange for other manors, lands, or hereditaments, situate in England or Wales, all or any of the said premises hereinbefore devised, and the inheritance thereof in fee simple, for such price or prices in money, or for such an equivalent in manors, lands, or hereditaments as to the said C. D. and E. F., or the survivor of them, or the heirs of such survivor, shall seem reasonable. AND I DECLARE, that any such sale may be either by public auction or private contract, and that the said C. D. and E. F., or the survivor of them, or the heirs of such survivor (*Power to insert conditions of sale; Trusts of purchase money and of money to be received in exchange, pp*, 330, 331, 332, 333; *the new purchase to be of estates in* ——*shire*). AND I BEQUEATH (*Bequest of leaseholds in* ——, *upon trusts corresponding with the uses of freeholds, p.* 283). AND I DEVISE all my real estate situate elsewhere than in the said county of ——, except estates vested in me upon trust or by way of mortgage, to the use of the said C. D. and E. F., their heirs, executors, and administrators respectively, according to the nature and tenure thereof, upon trust that the said C. D. and E. F., or the survivor of them, or the heirs, executors, or administrators of such survivor, shall, as soon as conveniently may be, sell the same either together or in parcels, and either by public auction or private contract, with power to make

Trustees to have full discretion as to the manner and conditions of sale and exchange.

Devise of residue of real estate to trustees upon trust to sell.

any stipulations as to title or evidence of title which they or he may think proper, and with full power to buy in and rescind any contract for sale, and to resell without being responsible for any loss occasioned thereby, and to do all such acts and assurances for effectuating any such sale as they or he shall think fit. AND I BEQUEATH all my personal estate except chattels real included in the general devise of real estate hereinbefore contained, and except chattels real in the county of —— hereinbefore bequeathed, unto the said C. D. and E. F., their executors and administrators, UPON TRUST, that the said C. D. and E. F., or the survivor, or the executors or administrators of such survivor, shall, as soon as conveniently may be, sell, call in, and convert into money such part of my said personal estate as shall not consist of money. AND I DECLARE that the said C. D. and E. F., and the survivor of them, and the heirs, executors, or administrators of such survivor, shall by and out of the monies to arise from the sale of my said real estate hereinafter devised in trust for sale, and from the sale, calling in, and conversion into money of such part of my said personal estate as shall not consist of money, and the money of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts, including any debts charged upon or payable out of my said real estates in the county of ——. And shall hold the residue of the money to arise from such sale, calling in, and conversion

Bequest of personal estate to trustees,

—upon trust, for sale and conversion into money.

Trust of money to arise from such sale and conversion.

into money upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations upon, for, with, under, and subject to which the money to arise from any sale under the power of sale hereinbefore contained of my real estates in the county of —— is hereby directed to be held. AND I APPOINT the said C. D. and E. F. executors of this my will, and authorise (*Power for executors to arrange and compromise, p. 195*). AND I DECLARE, that the receipt or receipts in writing (*Trustee clauses, p. 195*). IN WITNESS &c.

Appointment of executor

Trustee clauses.

No. XLIV.

WILL *of* REAL *and* PERSONAL ESTATE.—*Devise of Real Estate to Trustees in Trust to sell.—Trusts of Purchase Money to pay Debts and Legacies and invest the Residue, and hold the same in Trust for Testator's Children, in equal Shares, Sons at Twenty-one, Daughters at Twenty-one or Marriage.—Trusts for Advancement, Maintenance, and Accumulation.—Trusts in default of Children becoming entitled, to pay Legacies of £—— a-piece, and subject thereto in Trust for Testator's Wife.—Power of Leasing.—Trusts of Rents and Profits until a Sale.—Bequest of Personalty to Testator's Wife.—Bequest of Legacies.—Bequest of Legacies of £—— a-piece.—Accruer Clause as to Legacies of £—— apiece.—Legacies of Legatees of £—— apiece dying in Testator's Lifetime, to go to their Children.—Direction as to Time of Payment of Legacies of £—— a-piece.—Advancement, Maintenance,*

and Accumulation Clauses as to such Legacies.—Devise of Mortgage Estates.—(Usual Clauses).

I, A. B., of &c., DECLARE THIS TO BE MY LAST WILL. I DEVISE all my real estate (except what I otherwise devise by this my will, and except estates vested in me upon trust or by way of mortgage,) unto my dear wife C. D., and E. F., of &c., and G. H., of &c., their heirs, executors, and administrators, according to the nature and tenure thereof, UPON TRUST that the said C. D., E. F., and G. H., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, shall, within two years after my death, sell the same either together or in parcels, and either by public auction or private contract, with full power to buy in the same premises or any part thereof at any sale by public auction, and to rescind any contract for sale thereof, and to resell the same premises without being responsible for any loss occasioned thereby; And to do and execute all such acts and assurances as they, he, or she shall think fit for effectuating any such sale. AND I DECLARE, that the said C. D., E. F., and G. H., and the survivors or survivor of them, and the heirs, executors, and administrators of such survivor shall hold the monies to arise from the sale of my said real estate, UPON TRUST thereout to pay any part of my debts, funeral and testamentary expenses, and legacies, which my

Devise of real estate to trustees upon trust to sell.

Declaration of trusts of the money produced by sale of real estate.

To pay debts, &c., which personalty shall be in-

sufficient to pay.

personal estate hereinafter bequeathed shall be insufficient to pay; And UPON TRUST to invest the residue of the said monies in the names or name of the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor (hereinafter called the trustees or trustee), in any of the parliamentary stocks or public funds of Great Britain, or at interest upon Government or real securities in England, Wales, or Ireland (or in or upon the debentures, loan-notes, or other securities of any company incorporated by Act of Parliament and paying a dividend, or in or upon the shares or stock of any company a fixed dividend on the shares or stock of which shall be guaranteed, either in perpetuity or for a term of years, of which not less than —— years shall be unexpired at the date of such investment as last aforesaid, by any company incorporated by Act of Parliament), with power for the said trustees or trustee to alter, vary, and transpose such stocks, funds, and securities, at their or his discretion.

And invest the residue.

Trusts of the produce of the said real estate for testator's children, sons at 21, daughters at 21 or marriage, in equal shares.

AND I DECLARE, that the said trustees or trustee shall hold the said trust-monies, stocks, funds, shares, and securities, in trust for all my children or any my child, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one in equal shares.

Advancement clause.

AND I DECLARE, that it shall be lawful for the said trustees or trustee to raise any part or parts

of the then expectant or presumptive share or fortune of any son under the trusts hereinbefore declared, not exceeding in the whole for any such son one half-part of his then expectant or presumptive share or fortune, and apply the same for his advancement or benefit. AND I DECLARE, that the said trustees or trustee shall apply the whole or such part as they or he shall think fit of the annual income of the share or fortune to which any child shall for the time being be entitled in expectancy under the trusts aforesaid, for or towards the maintenance or education of such child; AND SHALL, during such suspense of absolute vesting, accumulate the residue (if any) thereof by investing the same and all the resulting income thereof upon any such stocks, funds, shares, or securities, as are hereinbefore mentioned, for the benefit of the person or persons who shall, under the trusts of this my will, become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulation of any preceding year or years, and apply the same for or towards the maintenance or education of the child or children for the time being presumptively entitled to the original trust-fund from which the same accumulation shall have proceeded. AND IF there shall be no child of mine living at my death, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age

Maintenance clause.

Accumulation clause.

Trust, in default of children entitled, to pay legacies of £—— apiece after bequeathed,

and subject thereto for testator's wife.

or marry, then from and after such default or failure of children, I DIRECT, that the said trustees or trustee shall hold the said trust-monies, stocks, funds, shares, and securities, or so much thereof as shall not have been applied under the trusts aforesaid, upon trust thereout to pay such of the several legacies of £—— apiece hereinafter bequeathed as shall become payable, and upon trust to pay, or transfer, or assign the residue of the said trust-monies, stocks, funds, shares, and securities, unto my said wife, her executors and administrators.

Power of leasing.

AND I DECLARE, that it shall be lawful for the said trustees or trustee, at any time or times before my said real estate shall be sold, to demise all or any part of my said real estate for any term of years absolute not exceeding twenty-one years, to take effect in possession, so as there be reserved on every such demise the best yearly rent or rents that can be reasonably gotten without any fine, premium, or foregift, or anything in the nature of a fine, premium, or foregift, and so as there be reserved in every such devise a condition of re-entry for nonpayment within a reasonable time to be therein specified of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and do thereby covenant for the payment of the rent or rents thereby reserved, and be not made dispunishable for waste.

Rents, until a sale, to go as the

AND I DECLARE, that, until my said real estate shall be sold, the said trustees or trustee shall apply the

income of such part thereof as shall remain unsold after payment thereout (*Trusts for application of rents and profits until a sale*, p. 233). I BEQUEATH all my personal estate, except chattels real included in the general devise of real estate hereinbefore contained, and except what I otherwise dispose of by this will or any codicil hereto, unto my said wife, her executors and administrators, subject to the payment of my debts, funeral and testamentary expenses, and legacies, other than the legacies of £—— apiece hereinafter bequeathed; which said legacies of £—— apiece I DECLARE shall be payable exclusively out of the produce of the real estate hereinbefore devised.

increase of the purchase money would have gone.

Bequest of personalty to testator's wife.

I BEQUEATH to my cousin E. F., of &c., and G. H., of &c., two of my executors hereinafter named, if they shall prove this my will and act in the execution thereof, the sum of £—— each, for their trouble in the execution of this my will.

Legacies to executors.

AND IF I shall die without leaving any child living at my death, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then I BEQUEATH the sum of £—— apiece to each of the following persons, ——, ——, ——, and ——. AND I DECLARE, that if any of the said legatees of £—— apiece shall die in my lifetime without leaving issue, any child living at my death, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, or if any of my said legatees of £—— apiece shall die after my death, being a male

Bequest of legacies in case a testator die without issue.

Accruer clause in respect of such legacies.

under the age of twenty-one years and without issue, or being a female under the age of twenty-one years and without having been married, then as well the original legacy of him or her so dying as aforesaid, as the share or shares by virtue of this proviso accruing to the legatee so dying, shall go to the others or other of the said legatees of £—— apiece (other than such of them as shall die in my lifetime), if more than one in equal shares. AND I DECLARE, that if any of my said legatees of £—— apiece shall die in my lifetime leaving any child who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then and in every such case as well the original legacy of £—— of him or her so dying, as the share or shares to which he or she would or might have become entitled by survivorship or accruer under the provision hereinbefore contained if he or she had survived me and had attained the age of twenty-one years, shall go and belong to all and every the children or child of his or her body living at my death, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, equally to be divided among them if more than one, and if there shall be but one such child, then the whole to go to such one child. AND I DIRECT that the said legacies of £—— a-piece shall be paid at the expiration of —— calendar months from my death, or immediately after such default or failure of issue

Legacies of legatees dying in testator's lifetime to go to their children.

Directions as to time of payment of legacies.

of my body which shall last happen; And that in case any of such legacies shall not be absolutely vested at the time hereinbefore appointed for the payment thereof, then my said wife and the said E. F. and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor (hereinafter called the trustees or trustee) shall receive such last-mentioned legacy, and invest the same upon any of the parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, with power to alter, vary, or transpose such stocks, funds, or securities at pleasure. PROVIDED ALWAYS that the said trustees or trustee may, at their, his, or her absolute discretion, raise all or any part of the legacy to which any infant would be entitled under this my will if such infant had attained the age of twenty-one years, and apply the same for the advancement or benefit of such infant. AND I DECLARE that the said trustees or trustee shall at their, his, or her absolute discretion, apply the whole or any part of the annual income of the legacy to which any infant shall for the time being be entitled in expectancy under the trusts hereinbefore declared for or towards the maintenance or education of such infant, either directly, or to his or her guardians or guardian, without seeing to the application thereof, or requiring any account of the same; AND SHALL during such suspense of absolute vesting accumulate (*Trust for accumulation, p.* 397). I DEVISE (*Devise of estates*

Directions as to investment of legacies in case of the infancy of legatees.

Advancement clause.

Maintenance and education clause.

Accumulation clause.

Devise of mortgage estates.

Trustee clauses.

vested in testator as mortgagee, p. 194). AND I DECLARE (*Trustees' receipt clause; Clauses for the appointment of new trustees, and the indemnity of trustees, pp.* 195, 196, 197). AND I APPOINT (*Appointment of executors, with power to arrange and compromise, pp.* 194, 195). IN WITNESS &c.

Appointment of executors.

No. XLV.

WILL of REAL and PERSONAL ESTATE. *—Bequest of Jewels, Plate, Household Furniture, Horses, Carriages, and Leasehold House to Testator's Wife.—Bequest of Legacy to Testator's Wife.—Bequest of Legacies and Mourning to Servants.—Bequest of Charitable Legacies.—Bequest of Legacies to an Infant, to acting Executors, and to Executors declining to act.—Specific Legacy, with a Request that the same may be preserved.—Devise and Bequest of Real and Personal Property upon Trust to sell and convert into Money, and invest the Residue upon Trust to pay an Annuity to Testator's Wife, and Legacies to Testator's Children.—Residue to Testator's Children equally.—Advancement, Maintenance, and Accumulation Clauses.—Devise of Mortgage Estates.—Appointment of Guardians.—(Usual Clauses.)*

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I BEQUEATH to my dear wife, her executors and administrators, all jewels, watches, trin-

Bequest to testator's wife of

jewels, plate, household furniture, &c.

kets, and ornaments of the person which she shall have in her possession at my death, or of which I shall die possessed, and all my plate, plated articles, books, pictures, prints, works of art, wines, liquors, horses, carriages, harness, china, glass, household goods and furniture.

Bequest of leasehold-house to testator's wife.

I BEQUEATH to my said wife, her executors and administrators, such leasehold house as shall be my usual place of residence at my death, she paying the rent and performing the covenants in the lease of the same premises reserved and contained.

Bequest of legacy to testator's wife.

I BEQUEATH to my said wife the sum of £——, to be paid to her at the expiration of two months from my death.

Bequest of legacies and mourning to servants.

I BEQUEATH to each servant who shall be in my service at my death, who shall have been in my service for one year at my death, one year's wages. AND I BEQUEATH to each servant who shall be in my service at my death, who shall not have been in my service for one year, such a sum as shall be equal to the wages of such servant from the time of such servant entering my service until my death. AND I DIRECT my executors hereinafter named to provide suitable mourning for all my servants in my service at my death. AND I DECLARE, that the said legacies to my said servants shall be free from legacy duty and shall be in addition to any wages due to any such servants.

Bequest of charitable legacies.

I BEQUEATH to the treasurer for the time being of the —— Hospital in —— for the purposes of the same hospital the sum of £——. I BEQUEATH to the treasurer for the time being of the —— Institution for —— in

—— the sum of £—— for the purposes of the same institution. AND I DECLARE, that the receipts of the respective treasurers of the said —— Hospital and the said —— Institution shall be sufficient discharges for the legacies hereby bequeathed to them respectively. AND I DIRECT that the said last-mentioned legacies of £—— and £—— shall be paid free from legacy duty, and shall be paid exclusively out of such part of my personal estate as I can by law bequeath for charitable purposes. I BEQUEATH to my friend —— the sum of £——. I BEQUEATH to my godchild —— the sum of £——. AND I DIRECT, that, if my said godchild shall be under the age of twenty years at my death, the said legacy of £—— shall be paid to the father or guardian or guardians of the said —— for the benefit of the said ——, and that my trustees or executors so paying the same shall not be bound to see or inquire as to the application thereof. I BEQUEATH to each of my executors hereinafter named who shall act in the execution of this my will, the sum of £——. And in case any of the persons hereby appointed executors shall refuse to act in the execution of this my will, then I BEQUEATH to every person so named as executor and refusing to act the sum of £——. I BEQUEATH to my son C. D., if he shall be living at my death, but not otherwise, the sword presented to me by ——, and also all medals, crosses, clasps, stars, badges, and decorations conferred upon me by my sovereign or any foreign potentate, and which

Bequest of legacies;

—to an infant,

—to executors acting;

—to executors not acting.

Of decorations to sons and grandsons.

shall not be required to be returned at my death. And if my said son C. D. shall die in my lifetime, then I BEQUEATH the said articles to my eldest son living at my death, and if I shall leave no son living at my death then to my grandson living at my death who shall first attain the age of twenty-one years. AND IN CASE there shall be no grandson of mine living at my death who shall attain the age of twenty-one years, then I BEQUEATH the same articles to my friend C. D., of &c.; AND I DECLARE, that it is my hope that the person in whom the articles lastly hereinbefore bequeathed shall vest under this my will, will preserve the same in good order and unbroken as long as may be. I DEVISE AND BEQUEATH all my real and personal estate not hereinbefore specifically bequeathed unto E. F., of &c., and G. H., of &c., their heirs, executors, and administrators, according to the nature and tenure thereof, UPON TRUST that the said E. F. and G. H., or the survivor of them, or the heirs, executors, or administrators of such survivor (hereinafter called the trustees or trustee), shall with all convenient speed sell my said real estate, and sell, call in, and convert into money such part of my said personal estate as shall not consist of ready money, and shall stand possessed of the monies to arise from such sale, calling in, and conversion into money, and of the ready money of which I shall be possessed at my death, UPON TRUST that the said trustees or trustee shall out of the same pay my debts, funeral and testamentary expenses, and

And in default of grandsons becoming entitled, to C. D., with a request for their preservation.

Devise and bequest of real and personal estates to trustees, upon trust to sell and convert into money.

To pay debts, funeral and testamentary expenses,

the costs of such sale, calling in, or conversion into money, and the legacies hereinbefore bequeathed, and the legacies I may bequeath by any codicil hereto; AND SHALL, at the discretion of the said trustees or trustee, invest the residue of the money to arise from such sale, calling in, and conversion into money, and of the ready money of which I shall die possessed, in the names or name of the said trustees or trustee in (*Trust for investment, p.* 190); AND SHALL stand possessed of the said trust monies, stocks, funds, and securities upon trust, out of the interest, dividends, and annual produce thereof, to pay my said wife during her life an annuity of £—— free from all deductions, by equal quarterly payments on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December in every year, the first quarterly payment to be made on such of the quarterly days of payment as shall first happen after my death if my said wife shall be then living; AND, SUBJECT thereto, upon trust that the said trustees or trustee shall, out of the same trust monies, stocks, funds, and securities, raise and pay to each of my sons who shall attain the age of twenty-one years the sum of £——, the same to be paid to him on his attaining the age of twenty-one years if the same shall happen after my death, but if the same shall happen in my lifetime, then immediately after my death; And raise and pay to each of my daughters who shall attain the age of twenty-one years or marry

and the legacies before given;

—and to invest the residue;

—and pay annuity to testator's wife.

To raise legacies for sons

and daughters.

the sum of £——, the same sum to be paid to her on her attaining the age of twenty-one years or marrying, whichever shall first happen if the same shall happen after my death, but if the same shall happen in my lifetime, then immediately after my death; AND SHALL stand possessed of the residue of the said trust monies, stocks, funds, and securities, and of the interest, dividends, and annual produce thereof, subject and without prejudice to the payment thereout of the said annual sum of £—— to my said wife, IN TRUST for all my children or any child who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one in equal shares.

Trusts of residue for testator's children equally

AND I DECLARE, that, until the portion hereby provided for any such child shall become payable under the trusts aforesaid, the said trustees or trustee shall pay the whole or so much as the said trustees or trustee for the time being shall think fit of the interest, dividends, and annual produce of the portion to which such child shall for the time being be presumptively entitled in expectancy under the trusts aforesaid (including interest at £4 per cent. upon the said legacies of £—— or £—— to which such child shall for the time being be presumptively entitled) for the maintenance or education of the child for the time being presumptively entitled thereto, either directly, or by paying the same to the guardian or guardians of such child, without seeing to the application thereof. PROVIDED ALWAYS (*Ad-*

Maintenance clause.

Advancement clause.

vancement and accumulation clause, p. 397). AND I DEVISE (*Devise of mortgage estates, p.* 194). AND I APPOINT my said wife and the said E. F. and G. H. guardians of my infant children during their minorities. AND I APPOINT my said wife and the said E. F. and G. H. executors of my said will; and (*Power for executors to compromise, p.* 195). AND I DECLARE (*Trustees' receipt clause; Provision for the indemnity of trustees and for the appointment of new trustees, pp.* 195, 196, 197). IN WITNESS &c.

Accumulation clause.

Devise of mortgage estates.

Appointment of guardians and executors.

Usual clauses.

No. XLVI.

WILL *of* REAL *and* PERSONAL ESTATE. *Directions as to Monument.—Devise of Real Estate, except an Advowson, to C. D. for Life, with Remainder to his Sons successively in Tail; to Trustees for* 1000 *Years; to the Daughters of C. D. successively in Tail, with Remainder, except as to Estates in —— and ——, to I. K. for Life, to his Sons successively in Tail; to M. N. for Life, to his Sons successively in Tail; to Testator's right Heirs; as to Estates in —— and ——, to O. P. for Life; to his Sons successively in Tail; to Testator's right Heirs.—Devise of Advowson to Trustees for* 200 *Years, with Remainder to the Uses of Estates firstly devised.—Trusts of Term of* 200 *Years to present certain Persons to the first Vacancy.—Name and Arms Clause.—Trusts during Minority of Devisees.—Declaration that Tenants for Life shall be impeachable for Waste.—Power for Trustees to fell Timber.—Power of Jointuring and Charging Portions out*

of and upon Estates firstly and secondly devised.—Power of Leasing.—Power of Sale and Exchange.—Bequests of various Sums of Money to Trustees upon Trust for certain Persons for Life, with Remainders over; Legacies to Executors; to Servants; to a Church, if it be determined to build one.—Power to pay last-mentioned Legacy towards repairing Church.—Trusts of Term of 1000 *Years to raise Portions for Younger Daughters of C. D.—Charge of* £7000 *upon Estates in —— and —— in case O. P. or I. K. become entitled thereto, in Aid of Testator's Residuary Personal Estate.—Devise and Bequest of Copyholds and Leaseholds upon Trust corresponding with Uses of Freeholds.—Bequest of Residue of Personalty to H. A. L., and in case H. A. L. die in Testator's Lifetime upon the Trusts of the Money to arise from a Sale of Real Estates not in —— and ——.—Devise of Mortgage Estates.—Appointment of Executors.—Trustee Clauses.*

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I DIRECT my executors hereinafter named to erect a monument to the memory of myself and my late dear wife in the parish church of ——, or in the churchyard as near as may be to the said church. AND I DIRECT, that the cost of such

Direction as to monument.

monument, including all the fees and expenses payable in respect thereof, shall not be more than the sum of £——. I DEVISE all my real estates, except the advowson of the rectory of ——, and except estates vested in me upon trust or by way of mortgage, to the use of my nephew C. D., of &c., and his assigns for his life, with remainder to the use of the first and every other son of the said C. D. successively according to seniority in tail; with remainder to the use of E. F., of &c., and G. H., of &c., their executors and administrators, for the term of 1000 years; and after the expiration or sooner determination of the said term of 1000 years, and in the meantime subject thereto and to the trusts thereof, to the use of the first and other daughters of the said C. D. successively according to seniority in tail; with remainder as to all my said real estates hereinbefore devised, except my real estate in the parishes of —— and —— in the county of ——, to the use of I. K., of &c., and his assigns for his life, with remainder to the use of the first and other sons of the said I. K. successively according to seniority in tail; with remainder to the use of M. N., of &c., and his assigns for his life, with remainder to the use of the first and other sons of the said M. N. successively according to seniority in tail; with remainder to the use of my own right heirs. AND as to all my said real estate in the parishes of —— and ——, I DEVISE the same, from the death of the said C. D. and failure of his issue as aforesaid, but

Devise of real estates except an advowson,

to C. D. for life;

remainder to the sons of C. D. successively in tail;[a]

—to trustees, for 1000 years.

—to the daughters of C. D. successively in tail,

with remainder as to all said real estates except estates in —— and —— to I. K.

—to the sons of I. K. successively in tail;

—to M. N. for life;

—to the sons of M. N. successively in tail;

—with remainder to testator's right heirs.

Devise of real estate in —— and —— to O. P. for life;

charged with the payment of the sum of £7000 in the event hereinafter mentioned, to the use of O. P., of &c., and his assigns for his life, with remainder to the use of the first and other sons of the said O. P. successively according to seniority in tail; with remainder to the use of the said I. K. and his assigns for his life, with remainder to the use of the first and other sons of the said I. K. successively according to seniority in tail; with remainder to the use of my own right heirs. AND I DEVISE the advowson, right of patronage and presentation of or to the rectory or parish church of ——, to the use of the said E. F. and G. H., their executors and administrators, for the term of 200 years from my death; and after the expiration or sooner determination of the said term, and in the meantime subject thereto and to the trusts thereof, to the use of the said C. D. and his assigns for his life, with remainder to the use of the first and other sons of the said C. D. successively according to seniority in tail, with remainder to the use of the first and other daughters of the said C. D. successively according to seniority in tail; with remainder to the use of the said I. K. and his assigns for his life, with remainder to the use of the first and other sons of the said I. K. successively according to seniority in tail, with remainder to the use of the first and other daughters of the said I. K. successively according to seniority in tail; with remainder to the use of the said M. N. and his assigns for his life without impeachment of waste, with re-

—to the sons of O. P. successively in tail,

—to the said I. K. for life,

—to the sons of I. K. successively in tail;

—to testator's right heirs.

Devise of advowson to trustees for 200 years.

with remainder to the same uses as are declared of the estates first devised.

mainder to the use of the first and other sons of the said M. N. successively according to seniority in tail, with remainder to the use of the first and other daughters of the said M. N. successively according to seniority in tail; with remainder to the use of my own right heirs.

Trusts of term of 200 years, to present certain specified persons, on the first vacancy.

AND I DECLARE, that the said advowson of the rectory of —— is hereby devised to the use of the said E. F. and G. H., their executors and administrators, for the said term of 200 years, UPON TRUST, that the said E. F. and G. H., or the survivor of them, or the executor or administrator of such survivor, (hereinafter called the trustees or trustee), shall, on the first vacancy which shall occur, present to the said benefice R. S., of &c., if he shall be then in holy orders and qualified to hold the same benefice; but if the said R. S. shall not be qualified to hold the same benefice or shall refuse to accept the said presentation thereto, then shall present to the said benefice T. U., of &c., if the said T. U. shall be then in holy orders and qualified to hold the same benefice; but if the said T. U. shall not be qualified to hold the same or shall refuse to accept the said presentation thereto, then shall present to the said benefice any son of the said E. F. who shall then be in holy orders and qualified to hold the same benefice; and if there shall be no son of the said E. F. qualified to hold the same benefice, or all and every sons or son so qualified of the said E. F. shall refuse to accept the said presentation thereto, then shall

present to the said benefice any son of the said G. H. who shall be in holy orders and qualified to hold the same benefice; and if there should be no son of the said G. H. qualified to hold the same benefice, or all and every sons or son so qualified of the said G. H. shall refuse to accept the said presentation thereto, then shall present to the said benefice such duly qualified person as the said trustees or trustee shall think proper. AND I DECLARE, that every person who under this my will shall become entitled to the possession of the premises firstly hereinbefore devised, shall within one year after he or she shall so become entitled, if he or she shall then be of full age, but if not then within one year after he or she shall attain twenty-one years, and every person who shall marry any female who shall be entitled to the possession of the said premises shall within one year after his wife shall so become entitled or he shall marry as aforesaid, which shall last happen, take and use upon all occasions the surname of B. only, and also take and bear the arms of B., either alone or quartered with his or her (*Provisions as to taking name and arms, p.* 295). AND I DECLARE, that if any person who would, if this present declaration had not been inserted, be entitled to the possession or to the receipt of the rents and profits of any of my said real estates hereinbefore devised as tenant in tail by purchase, then the said trustees or trustee shall during the such minority receive the rents and profits of

Name and arms clause.

Trusts during minorities of devisee.

the real estate, the person entitled to the possession or to the receipt of the rents and profits of which shall be so under age, with power to preserve game, and to accept surrenders from, and make allowances to, and arrangements with tenants and others (*Trusts during minority of devisee, p.* 450). AND I DECLARE, that every person hereby made tenant for life of any of my real estate hereinbefore devised shall be impeachable for waste. AND I DECLARE that the said trustees or trustee may, during the life of any person hereby made tenant for life, who shall be entitled to the possession or to the receipt of the rents and profits of any real estate hereinbefore devised, enter upon any such real estate, to the possession or to the receipt of the rents and profits of which such tenant for life shall be so entitled, and fell and cut any timber, trees, pollards, woods, coppices, and underwood, which may either be in a state of decay or fit to be cut, or which ought to be cut for the improvement of any other timber, or which in the opinion of the said trustees or trustee ought to be felled or cut down for the improvement in any manner of such real estate, and sell and dispose of the same timber or underwood either by public auction or private contract, either before or after the same shall be so felled or cut down, with power to buy in any of the same at any sale by public auction, and rescind any contract for the sale thereof, without being responsible for any loss occasioned thereby. AND I DECLARE, that it shall be lawful for the said trustees or trustee,

Declaration that tenants for life shall be impeachable for waste.

Power for trustees to fell timber, during life of tenant for life.

during the life of any such tenant for life so entitled as aforesaid, to mark and allot such timber or timber-like trees growing on the real estate, to the possession or to the receipt of the rents and profits of which such tenant for life shall be so entitled as aforesaid, as shall be required for repairs, or for building or rebuilding, or for other substantial improvements, and either to apply such timber for any such purposes, or to sell the same timber, and apply the money to be produced by such sale for or towards any such repairs, building, rebuilding, or improvements. AND I DECLARE, that it shall be lawful for the said trustees or trustee during the continuance of any such estate for life as aforesaid, by making entries on the same premises, or by bringing actions or suits against any person or persons, or by any other ways and means, to preserve any woods, coppices, underwoods, timber, or trees upon any of the same premises from being felled, cut down, or otherwise damaged. AND I DIRECT the said trustees or trustee, if and when they or he shall think fit, to replant the ground on which any timber to be cut down shall have stood. AND I DECLARE, that the said trustees or trustee may employ any agents or servants for the purposes aforesaid at such salary or other remuneration as the said trustees or trustee shall think fit. AND I DECLARE, that all such salaries or remuneration, and all other costs, charges, and expenses attending the carrying into effect any of the trusts hereinbefore declared of the said woods

And to preserve and replant timber.

and wood ground, shall be paid out of the proceeds of the timber to be cut down, under the powers hereinbefore contained, upon the estates upon which such expenses shall be incurred. AND I DECLARE, that it shall be lawful for every person hereby made tenant for life of the real estates firstly hereinbefore devised in strict settlement, either before or after he shall be entitled to the possession or to the receipt of the rents and profits of the real estates so firstly hereinbefore devised in strict settlement (but subject to the uses or estates preceding the estate of the person exercising this power, and to the powers annexed to such preceding estates, and to any estates which may have been limited in exercise of any such powers, by deed or deeds, or by will or codicil, to appoint to any woman or women whom he may marry or have married, for her or their life or respective lives, or any less period, a clear yearly rent-charge or rent-charges not exceeding in the whole for any one woman the sum of £——, to be charged upon and payable out of all or any part of the said real estates firstly hereinbefore devised in strict settlement, with usual powers of distress and entry for recovering and enforcing the payment thereof; AND also to appoint the premises so charged to any person or persons for any term or terms of years, to take effect immediately after the decease of the person for the time being exercising this power, upon usual trusts for securing the payment of the same yearly rent-charge or rent-charges. AND I

Power of jointuring out of estates firstly devised,

—and of limiting terms of years to secure jointure.

Power of

DECLARE, that it shall be lawful for every person hereby made tenant for life of the said real estates secondly hereinbefore devised in strict settlement, either before or after he shall be entitled to the possession or to the receipt of the rents and profits of the said real estates so secondly hereinbefore devised in strict settlement (but subject to the uses or estates preceding the estate of the person exercising this power, and to the powers annexed to such preceding estates, and to any estates which may have been limited in exercise of any such power), by deed or deeds, or by will or codicil, to appoint to any woman or women whom he may marry or have married, for her or their life or respective lives, a clear yearly rent-charge or rent-charges, not exceeding for any one woman the sum of £——, to be charged upon and payable out of all or any part of the said real estates secondly hereinbefore devised in strict settlement, with usual powers of distress and entry for recovering and enforcing the payment thereof. AND ALSO TO APPOINT the premises so charged as last aforesaid to any person or persons for any term or terms of years, to take effect immediately after the decease of the person for the time being exercising this present power, upon usual trusts for securing the payment of the same yearly rent-charge or rent-charges. PROVIDED NEVERTHELESS that no rent-charge shall become a lien upon all or any part of the real estate upon which the same shall be charged or shall become payable, unless the person appointing the same

jointuring out of estates secondly devised;

—and of limiting terms of years to secure jointures.

No jointure to become a lien unless the person limiting the same, or some of his

issue become entitled in possession.

shall be or become entitled to the possession or to the receipt of the rents and profits of the real estate upon which such rent-charge shall be charged, or some issue of such person would if of full age become so entitled; AND that the said real estates firstly hereinbefore devised in strict settlement shall not at one time be subject to the payment of rent-charges exceeding in the whole the sum of £——; And that the said real estates secondly hereinbefore devised in strict settlement shall not at one time be subject to the payment of rent-charges exceeding in the whole the sum of £——; And that the rent-charges upon each of the said real estates respectively shall have priority in order of limitation of the respective estates in such real estates charged with such rent-charges of the several persons exercising such power.

The estates not to be subject to more than certain annual sums at once for jointures

Power of charging portions for younger children on estates firstly devised.

AND I DECLARE that every person other than the said C. D., hereby made tenant for life of the said real estates firstly hereinbefore devised in strict settlement, may at any time or times, either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate therein, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by any deed or deeds, or by will or codicil, charge all or any part of the said real estates firstly hereinbefore devised in strict settlement with the payment for the portion or portions of his child or any of his children, other than an eldest or only

son or eldest daughter for the time being entitled to the possession or to the first estate of inheritance of the same real estate, of any sum or sums not exceeding the sum of £——, to be an interest vested or interests vested, and to be paid to such child or among such children, or any one or more of them exclusively of the others or other of them, and may by the same or any other deed or deeds, or by will or codicil, charge the premises intended to be charged with such portion or portions respectively, with the payment of any clear annual sum or sums not exceeding the interest of the portion or portions to be charged as aforesaid, after the rate of £— per cent. per annum, to be applied for the maintenance or education of the child or children for whom such portion or portions shall be charged, and to be payable in such manner in every respect as the person for the time being exercising this power shall direct.

Power of charging portions for younger children on estate secondly devised;

AND I DECLARE that every person hereby made tenant for life of the real estate secondly hereinbefore devised in strict settlement, may at any time or times, either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate therein, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by any deed or deeds, or by will or codicil, charge all or any part of the said real estate secondly hereinbefore devised in strict settlement, with the payment for the portion or

portions of his child, or all or any of his children (other than an eldest or only son or eldest daughter for the time being entitled to the possession or to the first estate of inheritance of the same real estate), of any sum or sums of money not exceeding in the whole the sum of £——, to be an interest vested or interests vested in and to be paid to such child or such children, or to any one or more of them exclusively of the others or other of them, in such manner and form in all respects as the person for the time being exercising this power shall appoint; and may by the same or any other deed or deeds, or by will or codicil, charge the premises intended to be charged with such last-mentioned portion or portions respectively, with the payment of any clear annual sum or sums not exceeding the interest of the said last-mentioned portion or portions after the rate of £—— per cent. per annum, to be applied for the maintenance or education of the child or children for whom such portion or portions shall be charged, and to be payable in such manner in every respect as the person for the time being exercising this power shall direct. AND I DECLARE that any person exercising either of the powers of charging portions hereinbefore contained may, to provide for the raising and payment of the portion or portions and annual sum or sums to be charged by such person, by the same or any other deed, or by will or codicil, appoint the premises charged therewith to any person or persons for any term or terms of years, with or without im-

—and to limit terms of years for securing portions.

peachment of waste, upon usual trusts for securing payment of the same. PROVIDED NEVERTHELESS no portion or annual sum shall become a lien upon all or any of the real estates charged therewith, or become payable, unless the person appointing the same shall become entitled to the possession or to the receipt of the rents and profits of the real estate on which the same shall be charged, or some issue of such person shall or would, if of full age, become so entitled.

No portion to become a lien unless the person charging the same is sure of his issue becoming entitled in possession.

AND I DECLARE that it shall be lawful for the several persons hereby made tenants for life, when they shall respectively be in possession of the premises hereinbefore devised to them for life, and also for the said trustees or trustee during the minority of any person who shall be for the time being entitled to the actual possession of any of the premises hereinbefore devised, to appoint by way of lease any of the premises hereinbefore devised of which such tenant for life shall be in possession, or of which such person so under age shall be entitled to the actual possession, to any person (*Power of leasing, p.* 200).

Power to grant leases for 21 years.

AND I DECLARE that it shall be lawful for the said trustees or trustee during the life of any person hereby made tenant for life, who shall be for the time being entitled to the possession of any of the premises hereinbefore devised in strict settlement, with his consent in writing, and during the minority of any person hereby made tenant in tail by purchase who shall be entitled to the possession of any of the said premises, at the discretion of the said trustees or trustee, to

Power of sale and exchange.

dispose of and convey, either by way of sale or in exchange for other manors, lands, or hereditaments situate in England or Wales, any of the premises hereinbefore devised of which such tenant for life shall be in possession, or of which such tenant in tail by purchase so under age shall be entitled to the actual possession and the inheritance thereof in fee simple (*Power of sale*, *p.* 254). I BEQUEATH to the said E. F. and G H., their executors and administrators, the sum of £5000, UPON TRUST, that the said trustees or trustee shall invest the same in their or his names or name upon any of the Parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland (or in or upon the debentures, loan notes, or other securities of any company incorporated by Act of Parliament and paying a dividend), with power for the said trustees or trustee to vary the said stocks, funds, and securities at their or his discretion; AND I DECLARE that the said trustees or trustee shall pay the annual income of the said sum of £5000, or of the stocks, funds, and securities on which the same shall be invested, to my niece D. E. F., of &c., for her life for her separate use independently of her present or any future husband, and so that she shall not have power to deprive herself thereof by sale, mortgage, charge, or otherwise by way of anticipation; And after the death of the said D. E. F. shall hold the trust monies, stocks, funds, and securities IN TRUST for

Bequest of £5000 to the trustees in trust to invest,

and pay the produce to D. E. F. for her life for her separate use, and after her death for her children.

all the children or any the child of the said D. E. F., who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one in equal shares. AND I BEQUEATH to the said E. F. and G. H., their executors and administrators, the sum of £4000, upon the like trusts for investment of the same and for varying securities as are hereinbefore declared of the said sum of £5000, and the stocks, funds, and securities on which the same shall be invested, and UPON TRUST to hold the said sum of £4000, and the stocks, funds, and securities upon which the same shall be invested, upon the like trusts for the benefit of my niece E. F. G. and her children and child as are hereinbefore declared of the said sum of £5000, and the stocks, funds, and securities upon which the same shall be invested, for the benefit of the said D. E. F. and her children or child.

Bequest of £4000 to the trustees, upon corresponding trusts for E. F. G. and her children.

I DIRECT the said trustees or trustee to pay to my niece F. G. H., of &c., out of my personal estate an annuity of £200 for her life by equal half-yearly payments (the first half-yearly payment to be made at the expiration of six calendar months from my death) for her separate use independently of her present or any future husband.

Bequest of annuity.

AND I DECLARE, that, if any of them the said D. E. F., E. F. G., and F. G. H., or any child of any of them, shall become entitled under the will of my late uncle G. H. I., of &c., to the possession of the estate by the same will devised in strict settlement,

Direction that if legatees or annuitant become entitled to certain estates, legacies and annuities

shall not be payable.

then the pecuniary bequest hereinbefore made in favour of the niece and her children who or whose child shall so become entitled (including as to the said F. G. H. the annuity directed to be paid to her as aforesaid,) shall cease and determine, and the bequests so made in her or their favour, or so much thereof as shall not have become vested or been applied under any trust or power herein contained, shall sink into and form part of my residuary personal estate. PROVIDED ALWAYS that the said trustees or trustee may, after the death of them the said D. E. F. and E. F. G., or either of them, or, in the lifetime of them or either of them, with the consent in writing of one of them for the benefit of whose children this present power is to be exercised, raise any part or parts of the then expectant or presumptive or then vested share of any son of the said D. E. F. and E. F. G., under the trusts hereinbefore declared, not exceeding in the whole for any such son one half part of his then presumptive or vested share or fortune, and apply the same to the advancement or benefit of such son.

Advancement clause.

Maintenance and education clause.

AND I DECLARE that the said trustees or trustee shall, after the death of my said nieces D. E. F. and E. F. G., or either of them, apply the whole or such part as they or he shall think fit of the annual income of the share or fortune to which any child of such deceased niece shall for the time being be entitled in expectancy under the trusts hereinbefore declared, for or toward the maintenance or education of such child,

either directly or by paying the same to the father or guardian or guardians of such child, without seeing to the application, or being answerable for the misapplication or nonapplication thereof; AND SHALL, during such suspense of absolute vesting, accumulate all the residue (if any) thereof in the way of compound interest, by investing the same and all the resulting income and produce thereof from time to time in or upon any such stocks, funds, or securities as are hereinbefore mentioned, for the benefit of the person or persons who under the trusts herein contained shall have become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulation of any preceding year or years, and to apply the same for or towards the maintenance or education of the child or children who shall for the time being be presumptively entitled to the same respectively.

Accumulation clause.

AND I BEQUEATH the sum of £2000 to the said E. F. and G. H., their executors and administrators, UPON TRUST that the said trustees or trustee shall invest the same in their or his names or name upon any of the Parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England or Wales, but not in Ireland, and shall pay the dividends, interest, and annual produce thereof unto O. P. Q., of &c., and his assigns, for his life; and after the death of the said O. P. Q. shall pay or transfer the same last-mentioned trust monies, stocks, funds, and securities unto and among all

Bequest of £2000 to the trustees, upon trust for O. P. Q. for life, and after his death for his children.

the children or any the child of the said O. P. Q. who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one in equal shares. AND I DIRECT that the said trustees or trustee shall, after the death of the said O. P. Q., pay and apply the dividends, interest, and annual produce of the expectant or presumptive share of any child of the said O. P. Q. in the said last mentioned trust monies, stocks, funds, and securities, for or towards the maintenance or education of such child, either directly or by paying the same to the guardian or guardians of such child, without seeing to the application, or without being answerable for the misapplication or nonapplication thereof. AND I BEQUEATH the sum of £6000 to the said E. F. and G. H., their executors and administrators, UPON TRUST, that the said trustees or trustee shall invest the same in their or his names or name upon any of the Parliamentary stocks or public funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland (or in or upon the debentures, loan notes, or other security of any company incorporated by Act of Parliament and paying a dividend), with power for the said trustees or trustee to vary the said stocks, funds, and securities at their or his discretion; And shall pay the dividends, interest, and annual produce thereof to R. S. T., of &c., and his assigns, for his life; And after the death of the said R. S. T. shall pay or transfer one-third part of the £6000, or of the stocks, funds, or

Direction to apply interest for maintenance of such children.

Bequest of £6000 to the trustees upon trust to invest,

—and pay the produce to R. S. T. for life; and after his death as to one-third to J. F. T.;

securities upon which the same shall be invested, unto J. F. T., of &c., his executors and administrators; And shall pay or transfer one other third part of the said last-mentioned trust monies, stocks, funds, and securities to J. S., of &c., his executors and administrators; And shall hold the remaining third part of the said last-mentioned trust monies, stocks, funds, and securities, UPON TRUST, during the life of E. R. F., of &c., to pay the interest, dividends, and annual produce thereof unto the said E. R. F. for her separate use, independently of her present or any future husband; And so that the said E. R. F. shall not have power to deprive herself of the benefit thereof by sale, mortgage, charge, or otherwise in the way of anticipation; and after the death of the said E. R. F. shall hold the same trust monies, stocks, funds, and securities IN TRUST, to pay or transfer the same to all the children or any the child of the said E. R. F., who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one in equal shares. AND I DIRECT that the said trustees or trustee shall, from the death of the said E. R. F., pay and apply the dividends, interest, and annual produce of the expectant or presumptive share of any child of the said E. R. F. of the said last-mentioned trust monies, stocks, funds, and securities for or towards the maintenance or education of such child, either directly or by paying the same to the guardian or guardians of such child, without seeing to the application, or being

as to one-third to J. S.

as to one-third to E. R. F., for life, for her separate use,

—and after her death, in trust for her children.

Direction to apply interest for maintenance.

responsible for the misapplication or nonapplication thereof. I BEQUEATH to each of my executors hereinafter named, who shall act in the execution of this my will, the sum of £——, free from legacy duty. I BEQUEATH to my housekeeper M. N. O., if in my service at my death, the sum of £——, free from legacy duty. I BEQUEATH to each of my servants who shall be in my service at my death, and who shall have been in my service for one year, one year's wages, free from legacy duty, in addition to any wages due at my death. AND I DIRECT my executors, in case I shall die at any other place than ——, to pay the reasonable expenses of the return of any of my servants to their respective homes. AND IN CASE it be determined, within the space of seven years from my death, to rebuild the parish church of ——, then I direct my executors to pay, out of such part of my personal estate as I may by law bequeath for charitable purposes, the sum of £—— towards the expenses of such rebuilding. AND I DECLARE, that such sum of £—— may be paid to any person who in the opinion of my said trustees or trustee may be the proper person to receive the same, and that the receipt of such person shall be an effectual receipt for the same; and that my said trustees or trustee shall not be bound to see to the application or be answerable for the misapplication or nonapplication of the same. AND I DECLARE, that, in case it be determined within seven years from my death, instead of rebuilding the said parish church of ——, to repair the same church, then it shall be lawful

Legacies to executors who act;

—to servants;

—to a church, if it be determined to rebuild one.

Receipt clause.

Power to pay the said sum of £——, or any part thereof,

for my said trustees or trustee, at their or his discretion, either to pay the said sum of £—— so directed to be paid towards such rebuilding, or any part thereof, towards the expenses of repairing, or to withhold the same. AND I DECLARE, that the declarations hereinbefore contained as to the fund out of which the said sum of £—— so directed to be paid towards rebuilding is to be paid, and as to the person to whom the said sum may be paid, and as to the receipt of such person being a good discharge for the same, shall extend to any sum to be paid towards such repairing under the power hereinbefore contained. AND I DECLARE, that the said trustees or trustee shall hold the premises hereinbefore devised for the said term of 1000 years, UPON TRUST, if a daughter of the said C. D. shall under this my will become entitled for an estate in tail in possession to the real estates hereinbefore devised, and there shall be any daughter or daughters of the said C. D. other than the daughter so entitled in possession who shall attain twenty-one years or marry, then the said trustees or trustee shall, out of the rents and profits of the same premises, or out of the money produced by any sale of timber, or by selling or mortgaging the same or any part thereof for all or any part of the same term, or by any other reasonable ways or means, raise for the portion or portions of such daughter or daughters as aforesaid, other than such daughter entitled in possession as aforesaid, the sums following (that is to say), if there shall be but one such daughter of

towards repairing the said church.

Trusts of term of 1000 years, to raise portions for younger daughters of C. D.

the said C. D. (other than as aforesaid), the sum of £——, to be paid to such daughter at her age of twenty-one years or day of marriage, which shall first happen, if the same shall happen after the death of the said C. D. and the failure or determination of the estates in tail hereinbefore limited to the sons of the said C. D., but if the same shall happen during the life of the said C. D., or during the continuance of the estate in tail of any such son, then after the death of the said C. D. and the failure or determination of the estates in tail hereinbefore limited to the sons of the said C. D., and if there shall be but two such daughters (other than as aforesaid), the sum of £——, and if there shall be three or more such daughters (other than as aforesaid), the sum of £——, the said sum of £—— or £——, as the case may be, to be divided between the daughters entitled thereto in equal shares, and to be paid to them respectively at their respective ages of twenty-one years or respective days of marriage, which shall first happen, if the same respectively shall happen after the death of the said C. D. and the failure or determination of the estates in tail hereinbefore limited to the sons of the said C. D.; but if the same respectively shall happen during the life of the said C. D., or during the continuance of the estate in tail of any such son, then, after the death of the said C. D., and the failure or determination of the estates in tail hereinbefore limited to the sons of the said C. D., UPON TRUST, that the said trustees or trustee shall, after the death of the said C. D. and the failure or

Trusts for maintenance.

determination of the estates in tail hereinbefore limited to the sons of the said C. D., out of the rents and profits of the premises comprised in the said term of 1000 years or any part thereof, or out of the money produced by any sale of timber, raise such yearly sum or sums of money for the maintenance or education of every or any daughter of the said C. D. for the time being entitled in expectancy to a portion under the trusts hereinbefore declared, not exceeding the interest on the then expectant portion of such child at the rate of 5*l.* per cent. per annum, and pay or apply the same for or towards the maintenance or education of such child, either directly or by paying the same to the guardian or guardians of such child, without seeing to the application or being answerable for the misapplication or nonapplication thereof. AND I DECLARE, that in case either of them the said O. P. or I. K. shall become entitled under the limitations hereinbefore contained to the possession or the receipt of the rents and profits of the real estates hereinbefore devised, in the said parishes of —— and ——, then I charge the same last-mentioned premises with the payment to my executors of the sum of £——, to be held by my said executors as part of my residuary personal estate; AND I DIRECT my said trustees or trustee to raise the said sum of £——, together with interest for the same from the time when one of them the said O. P. and I. K. shall so become entitled as aforesaid until the same shall be raised, after the rate of £— per

Trusts as to £—— to be raised out of estates in —— and ——

cent. per annum, out of the rents and profits of the same premises in —— and ——, or out of the produce of the sale of timber on the same premises, or by selling or mortgaging the same premises in —— and ——, or any part thereof, for all or any part of the same term, or by any other reasonable ways or means, and to pay the same accordingly. I DEVISE all my copyhold and customary estates (except what I otherwise devise by this my will or any codicil hereto) situate elsewhere than in the said parishes of —— and ——, unto and to the use of the said E. F. and G. H., their heirs and assigns, according to the custom of the manor or manors of which the same respectively are holden, and at and under the rents, fines, heriots, suits, and services therefore due and of right accustomed, UPON SUCH TRUSTS, and with, under, and subject to such powers, provisoes, and declarations, as shall as nearly correspond with the uses, trusts, intents and purposes, powers, provisoes, and declarations hereinbefore declared of the freehold premises hereby devised, situate elsewhere than in the said parishes of —— and ——, as the different tenure of the premises and the rules of law and equity will permit, but not so as to increase or multiply charges. I DEVISE all my copyhold and customary estates situate in —— and —— (except what I otherwise devise by this my will or any codicil hereto) unto and to the use of the said E. F. and G. H., their heirs and assigns, (*Devise of copyholds in —— and ——, upon trusts corresponding with the uses of freeholds in —— and ——*). I BE-

Devise of copyholds not situated in —— or ——, upon trusts corresponding with the uses of freeholds not situate in —— or ——.

Devise of copyholds in —— and —— upon trusts corresponding with uses of freeholds in —— and ——.

QUEATH all my leasehold estates, whether holden for lives or for years (except what I otherwise bequeath by this my will or any codicil hereto), situate elsewhere than in the said parishes of —— and ——, unto the said E. F. and G. H., their executors and administrators, UPON TRUST, that the said trustees or trustee shall, out of the rents and profits thereof, pay the rents and annual sums, and perform the covenants and conditions in the leases thereof respectively reserved and contained, and on the part of the several lessees, or their respective executors, administrators, or assigns to be paid, observed, or performed; AND, subject thereto, shall hold the same leasehold premises upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as shall as nearly correspond with the uses, trusts, intents, purposes, powers, provisoes, and declarations hereinbefore contained of the freehold premises hereby devised, situate elsewhere than in the said parishes of —— and ——, as the different tenure and quality of the premises and the rules of law and equity will permit, but not so as to increase or multiply charges. AND I DECLARE, that none of the said leasehold premises hereinbefore bequeathed shall vest absolutely in any person hereby made tenant in tail by purchase of the said freehold premises hereby devised in strict settlement, situate elsewhere than in —— or ——, who shall die under the age of twenty-one years, but on the death of such tenant in tail by pur-

Bequest of leaseholds not situate in —— or ——, upon trusts corresponding with the uses of freeholds not in —— or ——.

Leaseholds not to vest absolutely in tenant in tail by purchase, who shall not attain 21.

chase shall go and remain in the same manner as if they had been freeholds, and had been included in the devise in strict settlement of hereditaments not situate in —— or —— hereinbefore contained. AND I BEQUEATH all my leasehold estates situate in —— and —— (except what I otherise bequeath by this my will or any codicil hereto), unto the said E. F. and G. H., their executors, (*Bequest of leaseholds in —— and —— upon trusts corresponding with the uses of freeholds in —— and ——*). I BEQUEATH all my personal estate not hereinbefore bequeathed, after payment thereout of my debts, funeral and testamentary expenses, and the legacies given by this my will or any codicil hereto, unto H. A. L., of &c., his executors and administrators. AND IN CASE the said H. A. L. shall die in my lifetime, then I direct that my said residuary personal estate shall be held upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, upon, for, with, under, and subject to which the money to arise from any sale under the power of sale hereinbefore contained of any of my said real estates hereinbefore devised not situate in —— or —— is hereinbefore directed to be held. I DEVISE (*Devise of mortgage estates, p.* 194.) AND I APPOINT the said E. F. and G. H. executors of this my will; and (*Power for executors to arrange and compromise, p.* 195). AND I DECLARE (*Trustees' receipt clause; Power to appoint new trustees, pp.* 195, 196, 197). IN WITNESS &c.

Bequest of leaseholds situate in —— and ——, upon trusts corresponding with uses of freeholds in —— and ——.

Bequest of residue of personalty to H. A. L.;

—and in case he die in testator's lifetime, upon the like trusts as the money to arise under the power of sale of lands not in —— or ——.

Devise of mortgage estates.

Appointment of executors.

Trustee clauses.

No. XLVII.

WILL *of* REAL *and* PERSONAL ESTATE *—Directions as to Funeral.—Devise of Freehold Estates to Trustees for* 1000 *Years, and subject thereto to G. H. for Life, Remainder to his Sons in Tail Male, Remainder to I. K. for Life, Remainder to his Sons in Tail Male, Remainder to Testator's Right Heirs.—Trusts of Term of* 1000 *Years to raise out of Rents and Profits Two Annuities.—Trusts for Management during Minorities.—Powers of Jointuring and Charging Portions.—Power of Leasing.—Powers of Sale and Exchange.—Devise of Copyholds and Bequests of Leaseholds upon Trusts corresponding with Uses of Freeholds.—Bequest of Personalty upon Trust to pay Debts and Legacies and invest the Residue in the Purchase of Real Estates to be settled to the Uses of Estates devised.—Devise of Mortgage Estates.—(Usual Clauses.)*

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I DESIRE to be buried in my family vault at —— aforesaid, and that my funeral be con-

Directions as to funeral.

ducted with no greater expense than decency requires. I DEVISE all my freehold estates except estates vested in me upon trust or by way of mortgage, TO THE USE of C. D., of &c., and E. F., of &c., their executors and administrators, for the term of 1000 years from my death without impeachment of waste, upon the trusts hereinafter declared concerning the same; And after the expiration or sooner determination of the same term, and in the meantime subject thereto and to the trusts thereof, TO THE USE of G. H., of &c., and his assigns for his life without impeachment of waste; with remainder TO THE USE of the first and every other son of the said G. H. successively according to their respective seniorities, in tail male; with remainder to the use of I. K., of &c., and his assigns for his life without impeachment of waste; with remainder to the use of the first and every other son of the said I. K. successively according to their respective seniorities, in tail male; and in default of such issue to the use of my own right heirs. AND I DECLARE, that the real estates hereinbefore devised to the use of the said C. D. and E. F. for the said term of 1000 years were so devised to them, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor (hereinafter called the trustees or trustee) shall, out of the rents and profits of the same premises, during the life of M. N., of &c., raise the annual sum of £——, and shall pay the same to the said M. N. by equal quarterly payments on the 25th

Devise of freehold estates.

—to trustees for 1000 years.

—remainder to G. H. for life, remainder to his first and other sons in tail male.

—remainder to I. K. for life and his first and other sons in tail male;

—remainder to testator's right heirs.

Trusts of term of 1000 years.

To raise out of rents and profits annuity of £—— and pay the same to or apply the same for the benefit of M. N.:

day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first of such payments to be made on such of the same days of payment as shall first happen after my death, or shall, at the discretion of the said trustees or trustee, apply and dispose of the said annuity of £—— or any part thereof for the maintenance or benefit of the said M. N., in such manner in all respects as the said trustees or trustee shall in their or his absolute discretion think fit; AND UPON TRUST, that the said trustees or trustee shall, out of the rents and profits of the same premises, during the life of O. P., of &c., raise the annual sum of £——, and pay the same to the said O. P. by equal quarterly payments on the said days hereinbefore mentioned, the first payment to be made on such of the said days of payment as shall first happen after my death.

—and annuity of £—— and pay the same to O. P.

AND I DECLARE, that, when any person entitled in possession to the same premises hereinbefore devised as tenant for life, or as tenant in tail male by purchase, shall be under the age of twenty-one years, then the said trustees or trustee shall during such minority receive the rents and profits of and manage the same premises hereinbefore devised, and may fell timber for repairs or sale or otherwise, and may preserve game, and accept surrenders from and make allowances to and arrangements with tenants or others, and may do all other things which to them or him may seem expedient for the due management

Trusts during minority of devisees.

thereof; And shall, out of the rents and profits (*Trust for management during minority, p.* 280).

Power of jointuring.

AND I DECLARE, that every person hereby made tenant for life (*Power of jointuring, p.* 250).

Power of charging portions.

AND I DECLARE, that every person hereby made tenant for life of the said real estate may (*Power of charging portions, p.* 252). AND I DECLARE

Powers of leasing, and of sale and exchange.

(*Power of leasing for twenty-one years; and Powers of sale and exchange, pp.* 253, 254). I DE-

Devise and bequest of copyholds and leaseholds upon trusts corresponding with uses of freeholds.

VISE (*Devise and bequest of copyholds and leaseholds upon trusts corresponding with the uses of freeholds, pp.* 282, 283). I BEQUEATH all my personal estate, except chattels real and except what I bequeath by this my will, unto the said C. D. and E. F., their executors and administrators,

Bequest of personalty in trust for sale and conversion into money;

UPON TRUST, that the said trustees or trustee shall, as soon as conveniently may be after my death, sell, call in, and convert into money such part of my personal estate as shall not consist of money.

—and to pay debts and legacies and invest the residue in the purchase of real estates to be settled to the uses of testator's estates.

AND I DECLARE, that the said trustees or trustee shall, out of the monies to arise from such sale and conversion into money (*Trust to pay debts and legacies and invest the residue in the purchase of real estates to be settled to the uses of testator's real estates, p.* 258, *using the word* hereinbefore *instead of* hereinafter.)

Devise of mortgage estates.

AND I DEVISE (*Devise of mortgage estates, p.* 194). AND I DECLARE (*Trus-*

Trustee clauses.

tees' receipt clause; Provision for the indemnity of trustees; and for the Appointment of new trustees, pp. 195, 196, 197).

Appointment of executors.

AND I APPOINT (*Appointment of executors, with Power to arrange and compromise, p.* 194). IN WITNESS &c.

No. XLVIII.

WILL *of* REAL *and* PERSONAL ESTATE.—*Devise and Bequest of Real and Personal Estate in Trust for Sale, Calling in and Conversion into Money.—Trusts of Produce to pay Debts and Legacies and invest the Residue.—Trusts of Residue during the Minority of G. H. to raise Sums not exceeding Amounts specified for Maintenance of G. H., and to accumulate the Residue of Income. Power to apply the Amount of such Accumulations for the Advancement of G. H.—Trusts of said Residue for G. H if he attain Twenty-one, and if he die under that Age for I. K. if then living, and if I. K. be then dead for M. N. if living and unmarried.—And if M. N. be then living and married In Trust for her Separate Use during Coverture, and afterwards for her or as she shall by Will appoint.—Power of Leasing Real Estate until sold.—Rents and Profits until a Sale to go as the Income of Purchase Money.—Power for Trustees to continue Investments of Personalty.—(Usual Clauses).*

Devise of real estate upon trust for sale.

I, A. B., of &c., DO DECLARE THIS TO BE MY LAST WILL. I DEVISE all my real estate, except what I otherwise devise by this my will, and except estates vested in me as a trustee or by way of mortgage, To THE USE of C. D., of &c., and E. F., of &c., their heirs, executors (*Devise of real estates upon trust for sale, p. 226*). I BEQUEATH all my personal estate (except chattels real included in the general devise hereinbefore contained of real estate, and except what I otherwise bequeath by this my will) unto the said C. D. and E. F., their executors and administrators, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, shall (*Trust for sale and conversion into money; Trust of money arising from sale of real estate, and sale and conversion into money of personal estate, to pay funeral and testamentary expenses, debts, and legacies, and invest the residue, p. 227*). AND I DECLARE, that the said trustees or trustee shall, during the minority of my reputed son G. H., of &c., at the discretion of the said trustees or trustee, pay or apply any part of the interest, dividends, and annual income of the said trust monies, stocks, funds, and securities, not exceeding in any one year until my said son shall attain the age of sixteen years the sum of £——, and not exceeding in any one year until my said son shall attain the age of twenty-one years the sum of £——, for or towards the maintenance or

Bequest of personalty upon trust for sale and conversion into money.

Trusts of money arising from such sale and conversion into money to pay debts, &c., and invest the residue.

Trust to raise not exceeding specified sums for the maintenance of G. H. during minority

education of the said G. H., and may either themselves or himself so pay or apply the same, or may pay the same to the guardian or guardians of the said G. H., or may, so long as the said G. H. shall reside with I. K., of &c., pay the same or any part thereof to the said I. K. for the purpose aforesaid without seeing to the application thereof. AND I DECLARE, that the said trustees or trustee shall accumulate all the residue, if any, of the same trust monies, stocks, funds, and securities, by investing the same and the resulting income thereof in or upon any such stocks, funds, or securities, as are hereinbefore mentioned for the benefit of the person or persons who under the trusts herein contained shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulations of any preceding year or years, and to apply the same or so much thereof as shall be required to make up, together with the annual income of the said trust funds, the annual sum for the time being authorised to be raised as hereinbefore is mentioned, for or towards the maintenance or education of the said G. H., in the same manner and to the same extent as such accumulations might have been applied if they had been interest, dividends, or income arising from the original trust fund in the year in which they shall be so applied. AND I DECLARE, that it shall be lawful for the said trustees or trustee to apply all or any part of the residue of the interest, dividends, and income, and any part of the

Accumulation clause

Advancement clause extending only to accumulations.

trust monies, stocks, funds, or securities to arise from the accumulation of the interest, dividends, and income of the said trust monies, stocks, funds, and securities, for the preferment, advancement, or benefit of the said G. H., as the said trustees or trustee shall think fit. AND I DECLARE, that the said trustees or trustee shall stand possessed of the said trust monies, stocks, funds, and securities, in case the said G. H. shall attain the age of twenty-one years, in trust for the said G. H., his executors and administrators; And in case the said G. H. shall die under the age of twenty-one years, then I DECLARE, that the said trustees or trustee shall stand possessed of the said trust monies, stocks, funds, and securities in trust for my cousin I. K., of &c., if he shall be living at the death of the said G. H.; And in case the said I. K. shall die in the lifetime of the said G. H., then I DECLARE, that the said trustees or trustee shall stand possessed of the said trust monies from the death of the said G. H. under the age of twenty-one years UPON THE TRUSTS following, that is to say, if my cousin M. N., of &c., shall be living and shall not be under coverture, in trust for the said M. N., her executors, administrators, and assigns; But in case the said M. N. shall be then living and shall be under coverture, then UPON TRUST that the said trustees or trustee shall, during the joint lives of the said M. N. and of her then husband, pay the interest, dividends, and income of the said trust monies, stocks, funds, and securities to the said M. N. for her separate use, independent of such husband, and of his debts, con-

Trusts of principal for G. H. if he attain twenty-one; and if he die under that age in trust for I. K. if living at the death of G. H.; and if I. K. be then dead, in trust for M. N. if living and unmarried, And in case M. N. be then living and married, in trust for her separate use during coverture; and after coverture, for her absolutely, or as she shall by will appoint.

trol, or engagements; And so that the said M. N. shall not have power to dispose or deprive herself of the benefit thereof in the way of anticipation; And after the death of such one of them the said M. N. and her said husband as shall first die, UPON THE TRUSTS following, that is to say, if the said M. N. shall survive her said husband, then in trust for the said M. N., her executors, administrators, and assigns; But if the said M. N. shall die in the lifetime of her said husband, then in trust for such person or persons and for such purposes as the said M. N. shall, notwithstanding coverture, by will or codicil appoint; And in default of such appointment and so far as no such appointment shall extend, IN TRUST for such person or persons as under the statutes for the distribution of the effects of intestates would have become entitled thereto if the said M. N. had died possessed thereof intestate and without having been married, such persons if more than one to take as tenants in common, in the shares in which they would have taken under the same statutes. AND I DECLARE, that, until the said real estate hereinbefore devised shall be sold, it shall be lawful for the said trustees or trustee, at their or his discretion, to demise all or any part of my said real estate for any term of years absolute not exceeding twenty-one years to take effect in possession, so as there be reserved (*Power of leasing*, *p.* 200); And that in the meantime, until the said premises hereinbefore devised and bequeathed in trust for sale, calling in, and con-

Power of leasing for twenty-one years.

Rents and profits till a sale to go as the income of purchase money.

version into money shall have been sold, the said trustees or trustee shall apply the rents and profits, interest, and dividends, of the same premises so remaining unsold, uncalled in, or unconverted into money, as the case may be, (after payment thereout of all outgoings which any other person shall not be liable to pay) to the persons and in the manner to and in which the interest and annual produce of the monies to arise from such sale, calling in, or conversion into money, and of the stocks, funds, and securities upon which the same are hereinbefore directed to be invested would be applicable under the trusts herein contained, if the sale and investment aforesaid were actually made. AND I DECLARE, that, notwithstanding the trust hereinbefore contained for the sale, calling in, and conversion into money of my said personal estate, it shall be lawful for the said trustees or trustee, at their or his discretion, to allow all or any part of my said personal estate to remain in the state of investment in which the same shall be at my death, without being responsible for any loss which may be occasioned thereby. AND I DEVISE (*Devise of mortgage estates, p.* 194). AND I APPOINT the said C. D. and E. F. executors of this my will, and authorise (*Appointment of executors, with Power to arrange and compromise, p.* 195). AND I DECLARE (*Trustees' receipt clause; Power for the appointment of new trustees; Trustees' indemnity clause, pp.* 195, 196, 197). IN WITNESS &c.

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